California State Auditor

BUREAU OF STATE AUDITS

California Law Enforcement and Correctional Agencies:

With Increased Efforts, They Could Improve the Accuracy and Completeness of Public Information on Sex Offenders

August 2003
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August 20, 2003 2003-105

The Governor of California
President pro Tempore of the Senate
Speaker of the Assembly
State Capitol
Sacramento, California 95814

Dear Governor and Legislative Leaders:

As requested by the Joint Legislative Audit Committee, the Bureau of State Audits presents its audit report concerning the accuracy of the Department of Justice's (Justice) database of registered sex offenders commonly known as the Megan's Law database.

This report concludes that the Megan's Law database contains thousands of errors and inconsistencies, and out-of-date information, so the public is not accurately informed about all known sex offenders. Specifically, the Megan's Law database does not inform the public of the threat some serious and high-risk sex offenders pose because it excludes their records or erroneously lists them as incarcerated. Conversely, it may unnecessarily alarm the public because it includes hundreds of duplicate records and erroneously indicates that 1,142 sex offenders are living in public communities although the Department of Corrections reports them as incarcerated. Furthermore, the address information for roughly 23,000 records in the Megan's Law database has not been updated for at least a year largely because the sex offenders have not registered, and 14,000 of these have not been updated for at least five years. Although the accuracy of the Megan's Law database is highly dependent on sex offenders registering as required, California law enforcement and custodial institutions can do more to ensure its completeness and accuracy. Justice has not routinely reviewed the data's accuracy, maintaining that its primary role is to compile the sex offender data it receives. Nonetheless, Justice has recently taken steps to improve the accuracy of the information in the Megan's Law database.

Respectfully submitted,

Elaine M. Howle

ELAINE M. HOWLE
State Auditor

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SUMMARY

Audit Highlights . . .

Our review of the Department of Justice's (Justice) database of serious and high-risk sex offenders, known as the Megan's Law database, disclosed the following:

- ☑ *The Megan's Law database contains thousands of errors, inconsistencies, and out-of-date information.*
- ☑ *Because it excludes records for some serious and high-risk sex offenders and erroneously lists others as incarcerated, the Megan's Law database does not inform the public about these offenders.*
- ☑ *Conversely, because it includes hundreds of duplicate records and erroneously indicates that 1,142 incarcerated sex offenders are free, it may unnecessarily alarm the public.*
- ☑ *The address information for roughly 23,000 records in the Megan's Law database has not been updated for at least a year largely because sex offenders have not registered.*
- ☑ *Although Justice maintains that its primary responsibility is to compile the sex offender data it receives from law enforcement agencies and confinement facilities, it has taken steps to improve the accuracy of the information in the Megan's Law database.*

RESULTS IN BRIEF

In 1947, California became the first state in the nation to require convicted sex offenders to register with local law enforcement agencies, and the State's requirements have evolved in the last decade to require sex offenders to register more often and provide more detailed information. This evolution has been largely in response to the 1996 federal and state Megan's Laws, which notably require California law enforcement agencies to offer public access to information on every sex offender classified as *serious* or *high risk*, including the offender's name, physical description, and the county and zip code where the offender last registered. In its Violent Crime Information Network (VCIN), the Department of Justice (Justice) maintains a database of this public information, along with other data not available to the public, about violent offenders, including sex offenders. Justice allows law enforcement agencies access to its intranet to gather and disseminate the public data on sex offenders classified as serious or high risk. This public information, commonly known as the Megan's Law database, contained 80,746 records of convicted sex offenders registered in California as of July 2003 and is accessible to the public at local law enforcement agencies. Using the Megan's Law database, parents might check to see the names and photographs of convicted sex offenders registered in their zip code areas.

Unfortunately, the Megan's Law database contains thousands of errors and inconsistencies as well as out-of-date information; therefore, the public is not accurately informed about many known sex offenders. For example, at least 482 records incorrectly indicate that the offenders are incarcerated. Also, 51 juvenile sex offenders who were committed to the Department of Youth Authority (Youth Authority) have never been included in the Megan's Law database, even though they were convicted in adult court of registrable sex offenses subject to public disclosure. Other *serious* and *high-risk* sex offenders are not in the public database because Justice needs to do further research to learn the details of their crimes and accurately reflect this in the database. For a sample of these records, Justice took an average of 13 months to correct the offense codes. As a result of these inaccuracies in the Megan's Law database, California

residents may check the database yet have no idea they are living down the block from a dangerous sex offender, a possible scenario that violates the purpose and intention of Megan's Law.

On the other hand, some information in the Megan's Law database could unnecessarily alarm the public, leading people to believe their community is home to more sex offenders than are actually there. For example, the database contains more than 400 duplicate records. We found that personnel at local law enforcement agencies who do not correctly update information in the VCIN create most of these duplicate records. One city's police department created 89 duplicate records due to a misunderstanding of how to update existing records. Although Justice's procedures for entering information about registered sex offenders into the database emphasize the need to search for an existing record before creating a new one, personnel who update the records do not always comply with the requirement. Also, the Megan's Law database shows many sex offenders as living in public communities when they are actually incarcerated; we found 1,142 records that indicate the offenders were released although the Department of Corrections (Corrections) reports them as incarcerated. Justice has started using a software program that compares the VCIN with Corrections' database to update the status of incarcerated sex offenders.

We noted an even larger problem in the Megan's Law database; roughly 23,000 records contain address information that has not been updated for at least a year largely because the sex offenders have not registered, and 14,000 of these had not been updated for at least five years. To compound the problem, the Megan's Law database does not display the dates when sex offenders register, making it impossible for the public to realize that a record's information is out of date. Some outdated registration information results from sex offenders not registering annually or when they move, as required. Failing to register as a sex offender is a convictable crime, but the efforts of local law enforcement agencies to locate individuals who have committed this crime are often unsuccessful because many of those who violate registration laws continually relocate. Thus, a sex offender who moves from place to place and does not register may never be charged with the violation unless he or she is later arrested for another crime. Although the validity of address information in the Megan's Law database becomes questionable when a sex offender does not periodically register, the public is not made aware of this problem. Not only does the public information not include the date the offender last registered, but also it does not include disclaimers stating that

Justice does not verify the information, thereby warning people that they should not solely rely on the data to determine the risk an offender may pose to the public. These and other disclaimers would be valuable to people using the Megan's Law database, and Justice is presently finalizing new disclaimers.

The public uses the Megan's Law database to find out how many sex offenders live in a specific zip code or whether an individual living in a particular zip code has a record of sex offenses. Law enforcement agencies use the sex offender registration data in the VCIN to determine whether a person suspected of a crime is required to register as a sex offender and if so, whether he or she is in compliance with registration requirements. Although the accuracy of the information in both databases depends primarily on sex offenders providing their correct addresses and other information when they register and notifying law enforcement agencies when they relocate, the public relies heavily on Justice and other law enforcement agencies and correctional and other custodial agencies to provide the best information possible. Because the public and local law enforcement agencies use the sex offender information they see in the Megan's Law database and the VCIN, Justice should continually review the sex offender data it compiles for accuracy and to identify *high-risk* offenders. However, Justice maintains that its primary responsibility is to compile the data received from law enforcement agencies and confinement facilities. Justice also contends that it has not reviewed the data for accuracy because it has lacked the necessary resources.

Furthermore, Justice lacks an adequate process for identifying sex offenders who were convicted in juvenile court to ensure that their records are not made available to the public. Under state law, only juveniles who received convictions for their sex offenses from an adult court are subject to public disclosure. In reviewing the Megan's Law database, we found records for 42 juvenile sex offenders tried in juvenile court that should not have been included. According to Justice, staff who enter registration information in the VCIN are not sufficiently trained to distinguish between juvenile and superior court convictions and do not always receive court disposition documents to help determine whether the offender was convicted in juvenile court. However, by making these juvenile records public, Justice has denied these individuals their rightful protection and confidentiality under the law.

Since the State enacted Megan's Law in 1996, Justice has not reviewed the sex offender data it compiles to identify all duplicate records or inconsistent information. According to Justice, it has not had sufficient resources to resolve the discrepancies

that it knows exist. Justice further states that between 1997 and 2001, its staff who enter sex offender registration information into the VCIN worked overtime to keep up with the volume of paper registration forms submitted by local agencies that initially receive new or updated registrations from sex offenders. The volume of paper registration forms submitted to Justice dropped in 1999 when legislation was passed requiring local law enforcement agencies to electronically submit registration information directly into the VCIN. However, although the volume of registration forms dropped again in 2002, Justice claims that it has not had the resources necessary to fully research and resolve all the problems with the sex offender data. Moreover, according to Justice, because it is only a repository, not the originating source, of much of the Megan's Law information, it is beyond the purview of Justice to ensure that information provided by courts and registering agencies is accurate. Rather, Justice says, it is the duty of those agencies to ensure that the information they provide to Justice for the database is accurate. According to Justice, it has focused its efforts on entering registration information and responding to issues when they come to its attention, but until recently has placed little attention on analyzing the information as a whole, as we did to obtain the results we discuss in Chapter 1. However, because Justice makes this information available for the public to use to safeguard itself from dangerous sex offenders, we believe Justice should do more to update the database.

Since January 2003, Justice has taken steps to identify inaccurate information and has made corrections to hundreds of records. By comparing the VCIN sex offender records to other agencies' information, Justice found 1,360 records that can be deleted from the VCIN because the sex offenders are deceased and another 2,833 records that can be updated to reflect that the offenders are living outside the State. Justice also formed an assessment unit of eight full-time staff who are reviewing the criminal history files of sex offenders in its database and determining whether they are properly classified as to the risk they pose to the public. Justice reports that, as of July 2003, the assessment unit has raised the classification for 351 offenders from other to serious, making these records available to the public.

In addition, Justice asked Corrections in February 2003 to provide information about 2,575 sex offenders whose records in the VCIN indicated that their release from prison was imminent. As of May 2003, Corrections reported that it had discharged 921 and paroled 866 of the 2,575 offenders. It is likely that

the records for many of these offenders should appear in the Megan's Law database. Of the 866 parolees, Corrections found that 146 are at large—their locations unknown; many others were turned over to the U.S. Immigration and Naturalization Service (INS) and probably deported.[1] According to Corrections, although it reports when sex offenders are released, it does not inform Justice of those who were turned over to the INS upon release. According to Justice, it is currently working with the INS to obtain information on deported sex offenders.

RECOMMENDATIONS

To ensure that the records of juvenile sex offenders are properly classified and disclosed, Justice should periodically reconcile its sex offender registry with Youth Authority information, provide training to its staff regarding the proper classification of records, and obtain all necessary documentation to properly classify juvenile records.

To correctly identify and disclose information about all sex offenders, Justice should do the following:

- Regularly compare its records showing the incarcerated status with information provided by Corrections to determine which of these sex offenders are no longer in confinement. Justice can then update these records appropriately.

- Continue researching records to learn the details of the sex offenders' crimes and accurately reflect this in the database.

To eliminate duplicate records from the VCIN, Justice should periodically analyze its data to identify obvious and likely duplicates and eliminate them.

To ensure that its staff and personnel at local law enforcement agencies update sex offender information accurately, Justice should design and implement appropriate training programs.

To improve the value of the sex offender information available to the public but possibly outdated, Justice should modify the Megan's Law database to include the date the registration information was last provided.

[1] On March 1, 2003, the U.S. Immigration and Naturalization Service became part of the U.S. Department of Homeland Security and changed its name to the Bureau of Citizenship and Immigration Services.

To present the Megan's Law information to the public in a manner that represents its true nature and purpose, Justice should finalize its disclaimer information for the public to read when viewing the Megan's Law database.

To ensure that it identifies and updates records of sex offenders confined in prisons, Justice should continue to work with Corrections to improve this process and produce exception reports to resolve those records in question.

To ensure that it updates records of sex offenders who are deported, Justice should continue to work with the INS to obtain this information and update sex offenders' records.

AGENCY COMMENTS

Justice believes our audit has been a healthy experience but our report does not give adequate weight to the complexity of the environment within which law enforcement is forced to operate; specifically, competing program demands, budget cutbacks and associated personnel reductions, and the inadequacies of its computer system. Justice also believes that our report leaves the reader with the mistaken impression that Justice has made no effort in addressing some of the issues our report raises and where we do discuss Justice's efforts, it is only in a passing reference, causing our report to distort and understate the effectiveness of the sex offender registration program. For example, Justice believes that our decision not to comment on its future projects leaves the reader with an incomplete assessment of the sex offender registration program, relevant issues, and its efforts to solve problems. Additionally, Justice believes that our report unfairly blames it for not ensuring the accuracy of the information provided to it by other agencies and places the burden of inherent inefficiencies and compliance failures totally on it, ignoring the root cause of the problems, such as the other agencies and the sex offenders themselves. We respond to Justice's comments on pages 75 to 79.

The Youth and Adult Correctional Agency generally agrees with the portions of our report concerning Youth Authority and Corrections. ■

INTRODUCTION

BACKGROUND

For more than 50 years, California has required convicted sex offenders to register with local law enforcement agencies, becoming in 1947 the first state in the nation to establish such registration laws. The State's registration process was virtually unchanged until 1986, when new registration requirements were applied to juvenile sex offenders. More recently, since the mid-1990s, a number of legislative mandates have significantly reshaped California's sex offender registration requirements, calling for sex offenders to register more often and provide more detailed information. Most of these changes were responses to the May 1996 federal Megan's Law, followed four months later by the California Megan's Law.

Megan's Law is named after seven-year-old Megan Kanka, a New Jersey girl who was raped and killed by a previously convicted child molester who moved across the street from her family without their knowledge. In the wake of this tragedy, the Kankas sought to have a local community warned about sex offenders who move into the neighborhood, an effort that resulted in the federal Megan's Law. A reflection of the federal law, the California Megan's Law requires law enforcement agencies to make available to the public certain information about dangerous sex offenders, information known as the Megan's Law database. The law also authorizes local law enforcement to notify the public about *serious* and *high-risk* sex offenders who reside in the community; who are enrolled in or are employees of college campuses within the community; or who reside out of state, but work or attend school in the community. Although requiring the dissemination of certain information on convicted sex offenders, the law is not intended to punish the offender and specifically prohibits using the information to harass or commit any crime against the offender.

Sex offender registrants are classified into three categories—*high-risk, serious,* and *other*. Under the California Megan's Law, specified information only on *serious* and *high-risk* sex offenders, who total approximately 82 percent of all registered sex offenders, must be disclosed to the public. However, data on sex offenders classified as other or whose sex offenses were adjudicated in juvenile courts are not subject to public disclosure. As of July 3, 2003, there were 98,678 registered sex offenders in the Violent Crime Information Network (VCIN), a database of persons convicted of violent crimes.

The Department of Justice (Justice) maintains the VCIN, which automatically forwards the legally mandated information to the Megan's Law database. Figure 1 shows the numbers of sex offenders in each of the three classifications and lists the types of offenses included in each category.

CALIFORNIA'S SEX OFFENDERS ARE REQUIRED TO REGISTER ON A REGULAR BASIS

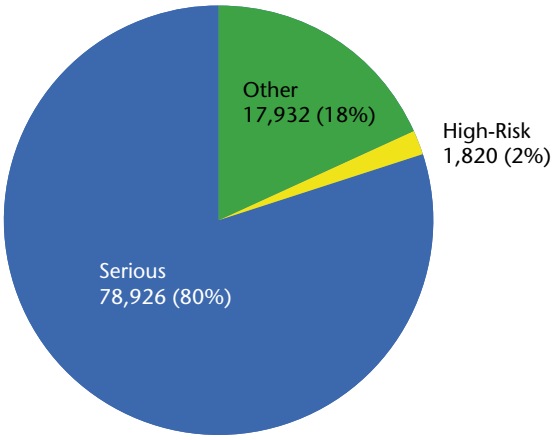
Officials at confinement facilities (custodians) are responsible for pre-registering first-time sex offenders who come into their systems.[2] By reviewing the VCIN or criminal history files, custodians determine whether offenders must pre-register or have previously registered. If an offender has never registered, a custodian completes a pre-registration package and sends these documents to Justice to enter into the VCIN. Pre-registration consists of taking fingerprints and a photograph and completing a pre-registration form that contains physical descriptors about the sex offender, such as height, race, and hair color, which would be available to the public even if the sex offender does not register as required. If the offender has previously registered, the custodian prepares a change of address form to notify Justice that the offender is confined; prisons have an automated process for sending change of address information. Justice updates the record when the offender is scheduled for release from confinement, and Justice or the local law enforcement agency updates the record when the sex offender registers.

With a few exceptions, the registration requirement is a lifetime mandate for all convicted sex offenders. Under current sex offender registration requirements, as defined in California Penal Code, Section 290, every sex offender is required to register within five working days of moving into any law enforcement's jurisdiction and when the sex offender changes his or her name, residence address, or temporary location. This registration requirement also applies to sex offenders who are enrolled in or are employees of college campuses within a law enforcement agency's jurisdiction or who reside out of state, but who work or attend school in the community. In addition, every sex offender is required to register annually within five working days of his or her birthday. Other requirements apply to any sex offender who moves to another state, is a transient, or has been designated by a court as a sexually violent predator. Figure 2 on page 10 illustrates the registration process for convicted sex offenders who are released from state confinement facilities.

[2] Custodians include probation officers; officials at local jails, schools, and road camps; state prisons, youth facilities, and hospitals; and any other institutions where offenders are confined.

FIGURE 1

Classifications of Sex Offenders Registered in California as of July 3, 2003



Total registered sex offenders: 98,678

Note: *Other* sex offenders, not subject to public disclosure, are individuals who have committed these offenses:

- Pornography
- Incest
- Indecent exposure
- Misdemeanor sexual battery
- Spousal rape

Juvenile sex offenders adjudicated in juvenile court are also included in the *other* classification and therefore not subject to public disclosure.

Serious sex offenders, subject to public disclosure, are individuals who have committed these offenses:

- Assault with intent to commit specified sex offenses
- Rape
- Sodomy with a minor or by force
- Lewd and lascivious contact with a child or dependent adult
- Oral copulation with a minor or by force
- Continuous sexual abuse of a child
- Foreign object penetration
- Child molestation
- Kidnapping with intent to commit specified sex offenses
- Felony sexual battery
- Felony enticement of a child for purposes of prostitution
- Abduction of a child for purposes of prostitution

High-risk sex offenders are subject to public disclosure because they have been convicted of an offense classified as serious and a combination of other offenses, including at least one violent sex offense and at least two other violent, but non-sex-related, offenses. The following is an example of one such combination of convictions:

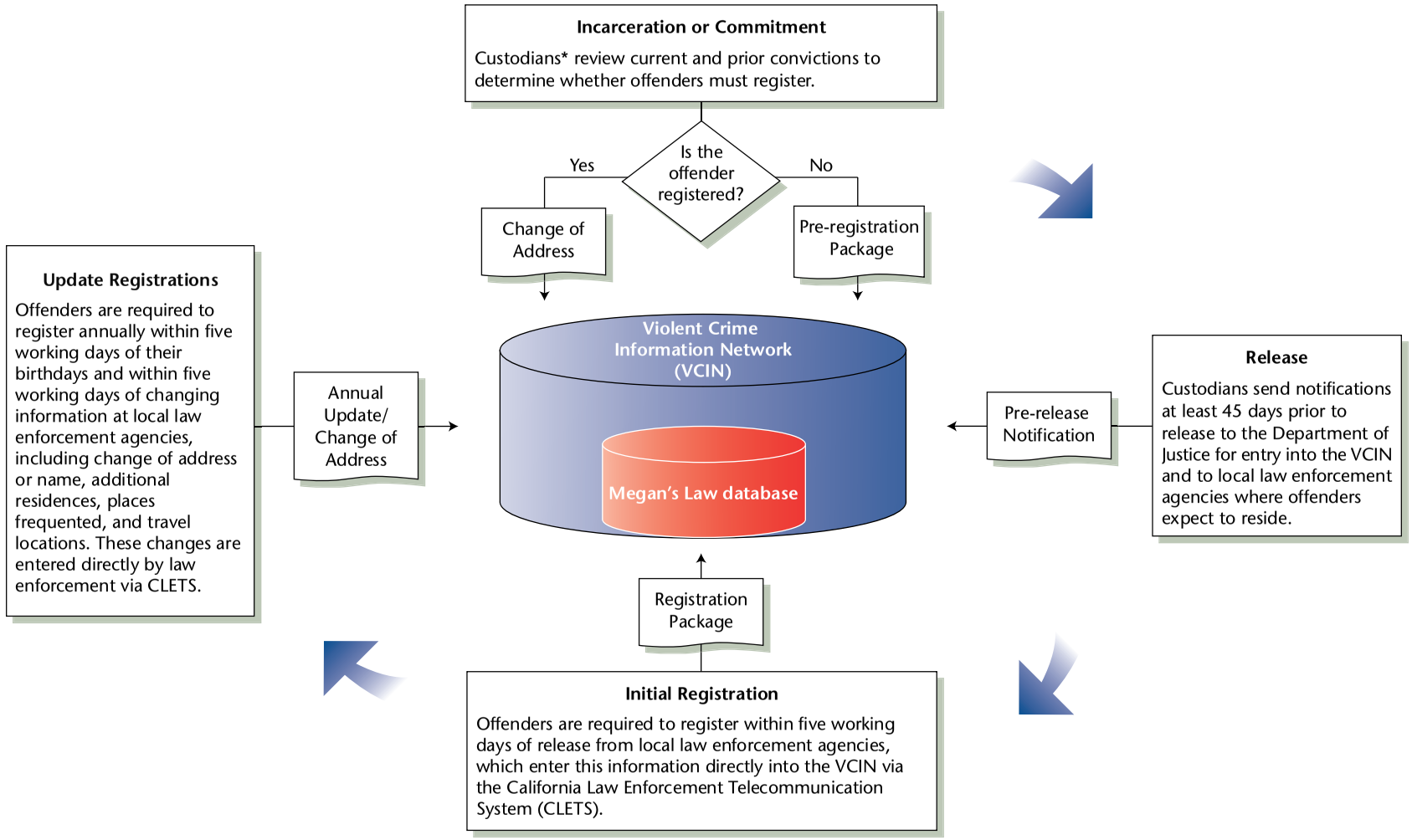
- One "serious" offense
- Two violent sex offenses
- One or more violent non-sex-related offenses
- At least two of the above were brought and tried separately

Violent offenses include, among others, murder; mayhem; torture; kidnapping; and those that are accomplished against the victim's will by means of force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person. Approximately 82 percent of all registered sex offenders comprise *serious* and *high-risk* sex offenders.

Source: Department of Justice Web site and California Penal Code, Section 290(n).

FIGURE 2

Registration Process for Sex Offenders Incarcerated or Committed to State Confinement Facilities


Incarceration or Commitment
Custodians* review current and prior convictions to determine whether offenders must register.
Is the offender registered?
Yes
No
Change of Address
Pre-registration Package
Update Registrations
Offenders are required to register annually within five working days of their birthdays and within five working days of changing information at local law enforcement agencies, including change of address or name, additional residences, places frequented, and travel locations. These changes are entered directly by law enforcement via CLETS.
Annual Update/ Change of Address
Violent Crime Information Network (VCIN)
Megan's Law database
Pre-release Notification
Release
Custodians send notifications at least 45 days prior to release to the Department of Justice for entry into the VCIN and to local law enforcement agencies where offenders expect to reside.
Registration Package
Initial Registration
Offenders are required to register within five working days of release from local law enforcement agencies, which enter this information directly into the VCIN via the California Law Enforcement Telecommunication System (CLETS).

Source: Department of Justice and California Penal Code, Section 290.

* State custodians include officials at state prisons, youth facilities, and hospitals.

Custodians and courts are required to notify sex offenders of their duty to register before releasing them on parole or probation or discharging them from confinement facilities, and sex offenders must sign that they have been informed of their duty to register before they are released or discharged. Nonetheless, sex offenders often violate the requirement to register with law enforcement agencies. Appendix A lists the registration requirements that appear on Justice's Notice of Sex Offender Registration Requirement form. Every sex offender must follow these requirements by registering at the law enforcement agency with jurisdiction over the place where the sex offender resides, works, or attends school. The intent of these requirements—to enable law enforcement agencies to closely track the whereabouts of convicted sex offenders—largely depends on the offenders actually registering. Before releasing sex offenders, custodians or courts notify Justice and the local law enforcement agencies where the sex offenders expect to reside, if known.

The sex offender registration process requires a law enforcement agency to complete a registration form that includes, among other items, descriptive information about the sex offender, address and vehicle information, and employer name and address. The registration form includes a signed statement in which the sex offender certifies that he or she has been informed and understands the registration responsibilities. The process also includes taking the offender's photograph and thumbprint. The registering law enforcement agency is required to enter the information from the registration form into the VCIN and forward the photograph to Justice. Also, a registering agency must forward any change of address from a sex offender to Justice within three days after receipt of this information by entering the new address information into the VCIN.

Justice Provides Information on *Serious* and *High-Risk* Sex Offenders in the Megan's Law Database

Megan's Law requires Justice to compile and make available to the public through local law enforcement agencies certain information on *serious* and *high-risk* sex offenders. Less extensive than the information provided to law enforcement, this public information includes the sex offender's classification (either serious or high risk); name and any aliases; gender; ethnicity; physical description; date of birth; scars, marks, and tattoos; photograph; crimes resulting in registration; and county and zip code based on the last registered address. Justice's VCIN is programmed to send this data on *serious* and *high-risk* sex

offenders to the Megan's Law database, which the public can search by using an individual's name, county, or zip code. To narrow a search, a person can also enter physical description information or date of birth. This information is available in 13 languages: Arabic, Armenian, Cambodian, Chinese, English, Japanese, Korean, Portuguese, Punjabi, Russian, Spanish, Tagalog, and Vietnamese.

Law Enforcement Agencies Must Register Sex Offenders, Submit the Information to Justice, and Provide Megan's Law Information to the Public

Local law enforcement agencies are required to register sex offenders who report to them and then electronically submit sex offender registration information directly into the VCIN by using the California Law Enforcement Telecommunication System (CLETS) as an interface. CLETS is the backbone of Justice's computer communications network, through which local law enforcement agencies also search the VCIN. Through CLETS, a local police officer or deputy sheriff can gain remote access to the VCIN, criminal history files, outstanding warrants, and other critical information, such as cautions to law enforcement officers approaching cars they have pulled over for traffic violations.

Methods of disseminating the Megan's Law information to the public include the following:

- The local law enforcement agency can actively notify nearby residents of sex offenders classified as serious or high risk.
- Residents can call for information on a 900 number that Justice provides.
- Residents can view the information at the local law enforcement agency.

Based on the responses of 331 law enforcement agencies surveyed by Justice, 76 law enforcement agencies made public disclosures on 424 sex offenders in 2002, distributing more than 10,841 fliers. To view the Megan's Law database, any individual can contact a local sheriff or police department to determine the nearest viewing station and how to access the database. Public access to the Megan's Law information is statutorily required of the 58 county sheriff's departments and any police department serving a population greater than 200,000.

Some of the costs local law enforcement agencies incur regarding sex offender registration and Megan's Law are reimbursable under a state mandate claim. However, activities to enforce registration requirements on sex offenders, which can generate significant costs, are not reimbursable. The California Constitution says the State, with some exceptions, is required to reimburse local government for costs of a new mandated program or increased level of service. Exceptions to reimbursement include costs associated with new crimes and with implementing federal laws. Consequently, since many of the legislative changes to California's sex offender registration requirements defined new crimes and/or implemented federal law, the Commission on State Mandates limited reimbursement to certain activities such as submitting registered sex offender information and retaining records.

SCOPE AND METHODOLOGY

The Joint Legislative Audit Committee (audit committee) asked the Bureau of State Audits to evaluate the accuracy of the State's database of registered sex offenders. Further, the audit committee asked us to determine if state and local law enforcement agencies are implementing Megan's Law in a manner that maximizes the registration data's accuracy. Lastly, we were asked to identify deficiencies in the current state Megan's Law that hinder the accuracy of the sex offender data and to provide legislative recommendations to address identified deficiencies.

We evaluated the accuracy of Justice's database of registered sex offenders by reviewing a snapshot—all the records in the Megan's Law database—as of March 28, 2003, looking for duplicated records and inconsistent and inaccurate data. To identify missing records, we compared the sex offender database to inmate and parolee data from Corrections and Youth Authority. To determine the reasons for inconsistencies, we reviewed samples of sex offender records and interviewed staff at these agencies. We also reviewed the processes used by Justice and Youth Authority to identify juvenile sex offenders whose records are subject to public disclosure, upholding the privacy protection the law affords to other juvenile sex offenders.

To determine how Justice ensures dissemination of accurate and complete data under Megan's Law, we interviewed staff regarding the processes for collecting, reviewing, and updating registration information. We also interviewed staff regarding

the process for classifying sex offenders for inclusion in the subset of sex offender records available to the public at local law enforcement agencies.

To determine whether local law enforcement agencies implement Megan's Law to ensure accurate and complete data, we attempted to survey 12 law enforcement agencies regarding their processes for identifying sex offenders in their custody and submitting registration data to Justice. Because local law enforcement agencies are not currently required to confirm a sex offender's reported location beyond obtaining some documentary evidence, such as a driver's license, utility bill, or printed personalized check, we did not evaluate these agencies' practices in this regard. We chose police and sheriff's departments based on the number of registered sex offenders within each jurisdiction as well as the percentage of sex offenders who were in violation of their registration requirements. Our sample included both rural and urban law enforcement agencies, as well as two police departments that contract with county sheriff's departments for law enforcement services. Ten of the 12 agencies responded to our survey. In addition, we asked the law enforcement agencies questions regarding the personnel resources devoted to registering and tracking sex offenders. We also analyzed the types of costs for the local implementation of Megan's Law to determine what types of costs the Commission on State Mandates approves for reimbursement to local agencies. The results of our survey are summarized in Appendix B.

Because the majority of *serious* and *high-risk* sex offenders serve prison sentences, we interviewed Corrections' staff regarding the processes for identifying, pre-registering, and notifying sex offenders of their registration responsibilities. In addition, we reviewed a sample of Corrections' records for sex offenders to determine if these processes were followed.

We also interviewed staff and reviewed selected case files at the Department of Mental Health to understand its processes for identifying, pre-registering, and notifying sex offenders and to determine the number of sex offenders who are released from the State's mental hospitals.

Finally, we reviewed existing and pending legislation governing sex offender registration to understand the requirements and determine if deficiencies in the current laws hinder the accuracy of the sex offender data. We did not identify any such deficiencies

in the current law, but pending legislation, if enacted, may affect the accuracy of sex offender data. We summarize this pending legislation in Appendix C. ■

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CHAPTER 1

The Megan's Law Database Contains Some Inaccurate and Incomplete Information About Convicted Sex Offenders

CHAPTER SUMMARY

Although the California Megan's Law requires that certain information on all sex offenders classified as serious or high risk be disclosed to the public, California law enforcement agencies have not ensured that all such offenders appear in the Megan's Law database. Compiled by the Department of Justice (Justice), the Megan's Law database enables the public to search for information on convicted sex offenders residing within specified zip codes. Our review of sex offender records found 2,263 records in the Megan's Law database were inconsistent with records of the incarcerating agencies, such as the Department of Corrections (Corrections) and the Department of Youth Authority (Youth Authority). In further examining these inconsistencies, we found 51 cases of juvenile sex offenders classified as *serious* or *high risk* who, having been convicted in adult court, should have been but were not in the Megan's Law database. These 51 serious or high-risk sex offenders are living anonymously in communities that lack information they could use to protect themselves and their children from possible harm—a situation that violates the intention of both federal and state Megan's Laws. Further, for offenders who are falsely listed as incarcerated, Justice's system does not notify local law enforcement agencies when they are in violation of their annual registration requirement. Local police and sheriff's departments then lack reliable information to track offenders who move into their areas.

We also found that some *serious* sex offenders' records are not in the Megan's Law database because they contain offense code 290. In reference to California Penal Code, Section 290, which mandates registration for sex offenders, a 290 offense code classifies a record as *other* and thus not subject to public disclosure. Justice and local law enforcement use the 290 offense code when the actual code is unknown, an offender's case is under review, or the pre-registration form omits conviction information. Eventually, Justice changes the 290 offense code for any sex offender whose offense is

more serious than a 290 code indicates. However, Justice said it only recently began reviewing these records and updating the offense codes because it did not have the necessary staffing, so some offenders have not been disclosed to the public in the Megan's Law database for many months. Out of a sample of 12 records with the 290 offense code, we found that Justice's assessment unit upgraded 10 records to serious, but only after an average of 13 months.

In other cases, information in the Megan's Law database leads the public to think that more sex offenders reside in their communities than actually do. We found more than 400 records in the database that were clearly duplicates of other records. Further, we found more than 1,100 records for sex offenders who are currently incarcerated but whose records in the Megan's Law database show them as residing at their last registered public locations. Justice has begun using a software program to compare its Violent Crime Information Network (VCIN), from which the Megan's Law database is extracted, with Corrections' database of sex offenders and update the VCIN to show the incarcerated status for those offenders under Corrections' authority. However, the criteria the reconciling software uses do not always match the VCIN records to Corrections' list of inmates. Further, because the Megan's Law database does not show the dates on which sex offenders last registered, the public does not realize that many records are several years old and sometimes represent offenders who have moved, been deported or incarcerated, or died. We found 23,000 records that were last updated prior to April 2002; of these records, 14,000 were last updated before April 1998.

Sex offenders who violate the registration laws and do not update their registrations are a formidable problem for law enforcement agencies, which may lack the personnel to track these offenders. Given this and other causes of errors in the Megan's Law database, the public would be in a better position to judge the disclosed information if Justice attached several disclaimers to the database. For example, a disclaimer could inform people viewing the database that Justice compiles but does not ensure the accuracy of the information, which comes from various sources and can change quickly.

Beyond the issue of accuracy in the Megan's Law database, we found that Justice has not been fully protecting the privacy rights of juvenile sex offenders who were tried in juvenile courts. Under the law, only the records of juvenile offenders convicted in adult court are disclosed to the public in the

Megan's Law database. However, we found 42 records for juvenile sex offenders convicted in juvenile courts that Justice mistakenly disclosed to the public. These errors resulted from inadequate training for personnel who review the records and from incomplete juvenile records that did not include court disposition documents. Justice is presently working with Youth Authority on creating a process for validating which type of court tried a juvenile sex offender.

JUSTICE AND OTHER STATE AGENCIES HAVE NOT SUFFICIENTLY WARNED THE PUBLIC ABOUT ALL REGISTERED SEX OFFENDERS

The Megan's Law database excludes a number of sex offenders classified as serious and high risk. We found 51 records of juvenile sex offenders whose crimes were serious enough to warrant trial in adult court (and therefore subject to public disclosure) that were not included in the Megan's Law database. Justice's staff who enter the data for juvenile offenders lack the training to identify the offenders that should be publicly disclosed, and the files often lack court disposition documents showing whether the cases were tried in adult or juvenile courts. Some *serious* sex offenders are not disclosed in Megan's Law database because their conviction information is not readily available; therefore, Justice and law enforcement agencies temporarily give the records offense code 290, placing them in the *other* category of minor offenses that do not warrant public disclosure. Also, Justice does not use all the data it receives from Corrections on sex offenders to update records and the database's accuracy is further degraded by 482 records we reviewed, indicating sex offenders were incarcerated when it appears from Justice's or Corrections' data that they had been discharged or paroled from prison or released from local confinement facilities, such as local jails. Because some sex offenders either do not appear or are incorrectly shown as being incarcerated in the Megan's Law database, residents who search the database might not discover information about offenders residing in their neighborhoods and may not be aware that such discrepancies in the data exist.

Although the Megan's Law database indicates that 482 sex offenders are incarcerated, it appears from Justice's or Corrections' data they had been paroled or released.

The Megan's Law Database Omits Some Records of Juvenile Sex Offenders Tried in Adult Courts

The law provides that only juveniles with juvenile court adjudications for their sex offenses are protected from public disclosure under Megan's Law. However, we found omitted

from the Megan's Law public information a total of 51 Youth Authority records of juvenile sex offenders tried in adult courts. In 20 cases, Justice's staff did not mark the records as coming from adult courts; in 31 other cases, Youth Authority or Corrections did not prepare pre-registration or notification forms or Justice did not receive or process them. Without information about *serious* and *high-risk* juvenile sex offenders tried in adult courts and released into communities, California residents have no way of knowing that they are living near these convicted offenders.

Of 40 VCIN records for juvenile sex offenders convicted in adult court, 20 were not available to the public because Justice incorrectly entered the cases into the VCIN.

Of 40 VCIN records for juvenile sex offenders identified by Youth Authority as having been convicted in adult court, we found 20 that were not available to the public in the Megan's Law database because staff in Justice's Sex Offender Tracking Program (SOTP) did not correctly enter the cases into the VCIN. If SOTP staff had flagged the records as coming from adult courts, the VCIN would have automatically put the records in the Megan's Law database as long as the offenses warranted it. According to the Youth Authority, these records are for juvenile sex offenders who were convicted in adult court because of the seriousness of their crimes and/or other factors, including previous records. Nevertheless, SOTP staff entered records of sex offenders into the VCIN without following up with the Youth Authority or the court that decided each case and marked the 20 records as juvenile court cases that should not be disclosed to the public. According to the SOTP manager, not all staff in the SOTP are adequately trained to distinguish between juvenile and adult court cases, and in some cases, the SOTP does not receive information from the courts to determine if a case was decided in adult or juvenile court. We reviewed some of Justice's files on juvenile sex offenders and found that most of them did not contain a court disposition document, although other documents in some of the files indicating the cases were tried in superior court should have at least prompted SOTP staff to seek additional evidence to determine whether to disclose the records. However, had each file contained the court disposition document, SOTP staff should have been able to either identify the type of court or follow up with the court, thus avoiding marking the 20 records as juvenile in the VCIN.

The assistant chief of the Bureau of Criminal Information and Analysis (BCIA), the Justice group that maintains the Megan's Law database and the manager of the Violent Crime Information Center (VCIC), a unit within the BCIA, assumed that SOTP staff always sought court disposition documents before deciding whether or not to mark a record as juvenile, and

they took action to correct all 20 records in the VCIN. Justice is currently implementing a process that allows courts to transmit information on dispositions to Justice in electronic format. Further, after we alerted Justice about this issue, it developed procedures for SOTP staff to identify and properly enter juvenile sex offender records into the VCIN. We could find no evidence that, before this, Justice had written procedures to obtain court disposition documents for juvenile records.

Another 31 Youth Authority records of juvenile sex offenders tried as adults were not entered into the VCIN as of March 28, 2003, and therefore were not available to the public in the Megan's Law database. This omission was caused either by Youth Authority or Corrections not preparing pre-registration and/or notification forms or by Justice not receiving or processing them. In any case, the 31 records were significant omissions because even if a sex offender does not register as required, once the offender has pre-registered, a photograph and personal information are available for the public to review. Although Justice may not have been aware that these individuals existed, it could have easily identified them by comparing its records to those of the Youth Authority.

The Megan's Law Database Also Omits Some Records With Inaccurate Offense Codes

During our audit, Justice identified 1,900 records in the VCIN that are not shown to the public because they have offense code 290 rather than the more specific offense codes for which the sex offenders were convicted. The VCIN automatically classifies records with offense code 290 as other and therefore does not send them to the Megan's Law database. Justice and local law enforcement agencies enter a 290 offense code into the VCIN when they are unsure about the actual offense code or an offender's case is under review. For example, a local law enforcement agency might enter the 290 offense code when registering a sex offender who was convicted in another state that does not use offense codes similar to those used by California. Also, Justice personnel may enter a 290 offense code when the conviction information is not provided on the pre-registration form. Justice ultimately determines the proper offense code by contacting the other state or researching conviction information. However, this research can be time-consuming, and Justice said that until recently it did not have the staffing resources necessary to do the work. Nevertheless, some records for sex offenders whose records have been given the 290 offense code should be shown to the public because

Some sex offenders' records were not disclosed for more than a year because Justice did not do the research necessary to correctly identify them as serious.

their offenses warrant it. We reviewed a sample of 12 records with only the 290 offense code to determine how long they had not been available to the public. After reviewing the offense codes for two of the records, Justice's assessment unit determined that the *other* classification was still appropriate. However, the assessment unit ultimately upgraded the remaining 10 offenders' classification from other to serious, but only after an average of 13 months, during which the 10 sex offenders were not disclosed to the public through the Megan's Law database.

In one example, the sex offender was initially registered in November 2000 with a 290 offense code. His record was not made public because he committed his sex crime as a juvenile and was convicted in juvenile court. However, he was convicted in October 2001 as an adult for child molestation and was fined and sentenced to three years probation. In such cases, the probation officer is supposed to submit to Justice a copy of the form notifying the sex offender of his responsibility to register with the specific offense code information, which Justice then uses to update the VCIN. However, this did not happen in this case, and the offender's record continued to have a 290 offense code. Because Justice does not routinely follow up on records with only a 290 offense code, it did not correct the offense code and make this record available to the public until its assessment unit, which is currently reviewing the classifications of all registered sex offenders, updated the record in April 2003. As a result, this offender's record was incorrectly omitted from the Megan's Law database for more than 17 months. During this time, the offender was rearrested for violating the terms of his probation and sentenced to two years in prison, but he had been living in the public for nine months.

Some Sex Offender Records Continue to Indicate the Incarcerated Status After Offenders Are Discharged From Prison or Paroled

Justice has misinformed people viewing the Megan's Law database not only by omitting sex offenders subject to public disclosure but also by not updating records in the database that show "incarcerated" status labels below the pictures of some *serious* and *high-risk* offenders who have been released from confinement. Unless Justice corrects these records or these offenders register either voluntarily or by force, their records in the Megan's Law database will continue to incorrectly indicate that they are incarcerated.

For 582 records in the VCIN that indicate the offenders are in prison, there were no records with matching CII numbers on Corrections' list of inmates. A sample of 59 of these revealed that 48 of the offenders were no longer in prison.

We compared the Criminal Information and Identification (CII) numbers, an identifying number Justice assigns to criminals based on their fingerprints, for 80,810 *serious* and *high-risk* sex offenders in the VCIN as of March 28, 2003, to the CII numbers on Corrections' March 2003 list of inmates. We found that for 582 records in the VCIN that indicated the offenders were in prison, there were no records with matching CII numbers on Corrections' list. We further compared the names and dates of birth in Corrections' data to those in the VCIN for a sample of 59 of the 582 records where the CII numbers did not match. We discovered that nine of the 59 records did indeed match, indicating that the offenders were truly incarcerated, and Corrections determined that two more records matched based on their own criteria. For the remaining 48 records, we received information from Justice and Corrections that indicates the following status of the 48 individuals:

- Seventeen were transferred to the custody of the U.S. Immigration and Naturalization Service (INS).[3]
- Twelve were discharged from Corrections (finished parole terms).
- Seven are deceased.
- Six were released on parole, three of whom are at large.
- Three are in custody of another law enforcement agency.
- One was released from another law enforcement agency.
- One is out-of-state.
- One should not have been shown as incarcerated, but Justice had incorrectly updated his record using another sex offender's information. Justice subsequently corrected this record.

The 19 offenders discharged from prison, released from a law enforcement agency, or paroled pose a risk to the public. However, the public will not be made aware of this risk by reviewing the Megan's Law database, as long as the sex offenders are incorrectly listed as incarcerated.

In addition to misinforming the public, Justice provides local law enforcement agencies with unreliable information. Justice's system automatically notifies local law enforcement agencies of offenders

[3] On March 1, 2003, the U.S. Immigration and Naturalization Service became part of the U.S. Department of Homeland Security and changed its name to the Bureau of Citizenship and Immigration Services.

who are possibly in violation of their registration requirements, but the system does not trigger registration violations for offenders labeled "incarcerated" because offenders are not required to register while confined. Therefore, for records that erroneously indicate that the sex offenders are incarcerated, law enforcement agencies are not automatically notified of sex offenders in their jurisdictions who may not be in compliance with their registration requirements, nor can law enforcement agencies rely on the VCIN to track offenders in their communities. Because Justice does not review Corrections' monthly list of prison inmates to identify sex offenders who appear on the list one month but not the next, it does not know if Corrections should have completed a form notifying Justice and local law enforcement that it will soon be releasing a sex offender or that one has died, and Justice does not know which offenders require follow-up to determine their true status.

Local Custodians Are Not Required to Track or Report All Sex Offenders Confined at Their Facilities

Although there are some obvious disadvantages to local custodians not reporting the incarceration of all sex offenders, the alternative has proved to carry a higher risk—namely that the local custodians would notify Justice when sex offenders were confined, but not when they were released.

Before releasing a sex offender confined for committing a registrable sex offense, an official at the confinement facility (custodian) or from the court is required by law to notify the offender of his or her duty to register.[4] After ensuring the offender signs a notification form, the custodian must forward the form to Justice and local law enforcement before releasing the individual. However, courts and local custodians—officials at local jails, schools, and road camps—are not required to follow this process when sex offenders are confined for reasons other than registrable sex offenses. Further, the law does not require local custodians to determine whether individuals are registered sex offenders or to inform Justice when they take sex offenders into custody. Therefore, Justice is not always aware of and cannot inform the public when sex offenders are confined for other types of offenses and later released from local custodians. Although there are some obvious disadvantages to local custodians not reporting the incarceration of sex offenders, the alternative has proved to carry a higher risk—namely that local custodians would notify Justice when sex offenders were confined but not when they were released.

Before July 2002, Justice granted many custodians—local and state—access rights to the VCIN so they could update records to indicate that sex offenders they took into custody were

[4] Custodians include probation officers; officials at local jails, schools, and road camps; state prisons, youth facilities, and hospitals; and any other institutions where offenders are confined.

incarcerated. According to Justice, this access created a large volume of temporary address changes, because offenders are frequently transferred between custodians and often serve short sentences. Furthermore, local custodians often updated offender records to the incarcerated status when the sex offenders were confined and then did not consistently update the records or send Justice notifications when the offenders were released. Consequently, Justice was unaware that the status and locations of these sex offenders should be changed in the VCIN. To prevent future similar occurrences and reduce the number of incarceration entries in the VCIN for temporary address changes that were not changed when the offenders were released, Justice revoked custodians' access rights to directly update records in the VCIN as of July 2002.

We found 446 sex offenders whose records indicated local custodians had incarcerated them for more than a year; but because most jail terms are limited to one year, we believe, and Justice agrees, that most of these records in the Megan's Law database do not accurately reflect the offenders' status.

However, Justice has not enlisted the help of the responsible custodians to correct the older records, leaving many records incorrectly showing that offenders are being held by custodians. Specifically, we found 446 sex offenders whose records indicated they had been incarcerated by local custodians for more than a year. With a few exceptions for lengthy trials and consecutive sentences, jail terms are limited to one year by state law, while longer sentences are served at a Corrections' facility. Therefore, it appears local custodians did not provide Justice with the notification forms it uses to update these records when offenders are released from confinement, leading the public who view the Megan's Law database to believe that these individuals were incarcerated. Justice agreed with our conclusion that the majority of these 446 records in the Megan's Law database do not accurately reflect the offenders' status.

As a result of Justice changing its policy so that custodians can no longer directly update the VCIN to reflect the incarcerated status for sex offenders, an offender's record in the Megan's Law database will no longer reflect short-term incarcerations unless local custodians submit paper registration forms to Justice. Consequently, the public will believe the offenders are in the community even though they are in jail. Justice believes, and we agree, that it is better for the public to believe for a short time that these offenders are not incarcerated, rather than risk them not being aware that the offenders have been released. However, this policy leads the public to believe there are more sex offenders in their communities than there actually are. The next section and Chapter 2 describe other causes of the public being more concerned or fearful than warranted.

DATABASE ERRORS AND OUTDATED INFORMATION MISLEAD THE PUBLIC TO BELIEVE THAT ITS COMMUNITIES HAVE MORE SEX OFFENDERS THAN ACTUALLY RESIDE THERE

Although sometimes not sufficiently warned of sex offenders, the public is led in other ways to believe that more sex offenders reside in specific communities than actually do. For example, the Megan's Law database includes more than 400 duplicate records because insufficiently trained staff sometimes create new records rather than updating existing ones. Also, seeing the records of sex offenders who are actually confined in prisons, the public believes its neighborhoods are home to these offenders. Largely because of difficulties matching Corrections' list of incarcerated sex offenders with records in the VCIN, more than 1,100 inmates falsely appear in the Megan's Law database as living in various zip codes. Finally, as we discuss in Chapter 2, Justice has identified more than 4,000 records that belong to sex offenders who are living outside the State or are deceased. Besides overstating the number of sex offenders residing at large, the Megan's Law database does not show the dates of offenders' registration, preventing the public from judging whether the disclosed information is current.

The Megan's Law Database Includes Hundreds of Duplicate Records

We identified more than 400 records in the Megan's Law database that were obvious duplicates of other records; consequently, the public cannot rely on the sex offender information shown in a zip code search to identify the number of sex offenders in a specific community.

In some cases, because the VCIN overstates the number of *serious* and *high-risk* sex offenders, the public viewing information in the Megan's Law database is led to believe there are more sex offenders in their communities than there actually are. For example, we identified more than 400 records in the Megan's Law database that were obvious duplicates of other database records. Consequently, the public cannot rely on the sex offender information shown in a zip code search to identify the number of offenders in a specific community. The public also cannot rely on the information retrieved from the Megan's Law database in response to a search for a specific sex offender by name, because more than one record can appear for an offender and, without dates on the records, the public cannot determine which record is the most current.

When analyzing the Megan's Law database, we first looked to identify any duplicated records. Although Justice identifies and corrects records with duplicate CII numbers each week, it does not identify and eliminate other obvious duplicates. We found that Justice does not sufficiently identify and eliminate duplicate

records, which may account for a portion of the records incorrectly having the incarcerated status and for other issues discussed later. To reduce the effect of duplicated records on the other problems we identified, we removed from our subsequent analyses 437 obviously duplicated records before further reviewing the Megan's Law database. For example, we eliminated two of three records for several sex offenders because their first and last names, date of birth, and eye color matched.

A member of the public, recognizing that two records may be duplicates, cannot determine which record contains more recent information because the Megan's Law database does not include the dates of the offenders' registrations.

Further, in most cases, one or more of the duplicated records contained outdated registration information and its apparent duplicate contained more recent registration information. For example, among several duplicated records we reviewed, one record showed no zip code, indicating to the public that the offender was incarcerated, and a second record for the same individual did not show the incarcerated status and included a zip code. A member of the public, recognizing that two records might be duplicates, cannot determine which record contains the more recent information because the Megan's Law database does not include the dates of offenders' registrations. In addition, we noticed many other records that appeared to be duplicated but did not match for all the criteria we used to identify obvious duplicate records. For example, two records matched based on first and last names, date of birth, and eye color, but one of the records indicated that the individual is 5 feet 10 inches tall, and the other records indicated his height is 5 feet 7 inches. Further, although the 437 duplicate records represent less than 1 percent of all sex offender records in the VCIN, combined with other errors and inconsistencies we identified and those that are not yet identified, the percentage could be significantly higher. Because it does not analyze the data, Justice remains unaware of the percentage of errors.

Lacking Adequate Training, Some Personnel Who Update Sex Offender Records Create Duplicate Records

Justice has not provided sufficient training to its personnel and to all local law enforcement agencies that update sex offender records. Moreover, neither the agencies nor Justice have reviewed and corrected duplicated records. According to Justice's policies and procedures, when a sex offender registers, personnel updating sex offender records are required to search the database to determine if the offender matches existing records. However, personnel do not always search for existing records before creating new ones, and Justice has not identified personnel who are insufficiently trained to ensure that they receive the needed training. In the case of local law enforcement agencies, Justice has not notified their supervisors

of the need for training in this area. For example, we found that personnel at one city's police department entered 89 of the 437 duplicate records. The police department explained that the errors resulted from a misunderstanding between its personnel and Justice's staff as to how to update addresses in existing records and that after discussing the problem with Justice, police department personnel are no longer duplicating records.

According to Justice, before fiscal year 2002–03, it had a team of six field representatives who provided technical training for local law enforcement agencies on entering data into the VCIN and other Justice databases. However, Justice could not provide information about when and how often the VCIN training was conducted, and the VCIC manager remembered that training often had to be tailored to the attending agencies because it typically involved instructions on how to use the unique entry screens that the agencies developed. Staffing problems within local law enforcement agencies further limit the adequacy of VCIN training. Because of high turnover among local staff who enter the registration information into the VCIN, those currently responsible may not be fully trained. Further, because of the State's recent budget reductions and hiring freeze, Justice eliminated two of the field representative positions in fiscal year 2002–03 and another two in fiscal year 2003–04. As a result, Justice currently provides training on sex offender registration only in the form of answering questions as they arise from local personnel who call the SOTP.

Some Records Show Incarcerated Sex Offenders as Residing in Local Neighborhoods

We found 1,142 records for incarcerated sex offenders that show the offenders' last known location information rather than their incarcerated status.

Residents searching for sex offenders in their communities may see more than actually exist. In reviewing the Megan's Law database, we found 1,142 records for incarcerated sex offenders that show the offenders' last known location information rather than the incarcerated status. Although not all these records would be shown to residents searching by zip code or city because the records may not include this information, many would be shown. California Penal Code, Section 290(f)(2), went into effect January 1, 1999, requiring Corrections, Youth Authority, and the Department of Mental Health (Mental Health) to inform Justice within 90 days of a sex offender's incarceration. Youth Authority and Mental Health encounter a relatively small number of sex offenders and comply with this law by

sending change of address forms to Justice.[5] As of May 2003, Youth Authority's confined and paroled population included 804 sex offenders who are required to register. Mental Health could not provide the number of sex offenders in its state hospital population of 4,275 patients as of June 30, 2003. However, because Mental Health's population includes some patients who are not criminals and others who are, Mental Health's number of sex offenders does not appear significant compared with that of Corrections, whose population comprised more than 30,000 sex offenders required to register. Therefore, in July 2002, Justice implemented a software program using Corrections' list of inmates to compare against the VCIN and update records to show the incarcerated status for incarcerated sex offenders.

Unfortunately, both the VCIN and Corrections' list of inmates contain errors that prevent the proper updating of some of the sex offenders' records in the VCIN.

However, this new process does not update all sex offenders' records in the VCIN. For example, after Justice used Corrections' data to update offenders' status in March 2003, we identified 1,142 records in the Megan's Law database that did not show the incarcerated status even though Corrections' list of inmates indicated that these offenders were in prison.[6] To match VCIN records with Corrections' list and then update VCIN records, Justice's software program uses three criteria: the CII number, the offender's date of birth, and the first four letters of his or her last name. All these data elements must match for the program to update the record in the VCIN. However, these criteria do not always match information in Corrections' list of inmates, and thus Justice's program does not update all records in the VCIN to show that offenders are in prison. For example, some last names do not match because they contain a typographical error in either Corrections' or Justice's data and are not updated using these criteria, which accounts for some of the errors we found. By matching only the CII numbers in both lists, we identified the 1,142 records we believe should have been updated to incarcerated status. Unfortunately, both the VCIN and the Corrections listing contain errors that prevent the proper updating of some sex offender records in the VCIN. Specifically, of the 161,689 records in Corrections' March 2003 list of inmates, we found almost 800 records with either no CII numbers or invalid or duplicated numbers. As a result, the public does not see the

[5] Although it did not always comply with this requirement, on June 19, 2003, Youth Authority implemented new policies and procedures requiring its staff to complete change of address forms and send them to Justice when sex offender registrants enter their facilities.

[6] Of the 1,142 records we identified, the automated process did not update 238 records because of a change made to the software program that updates the VCIN. After we brought the problem to its attention, Justice corrected the program and corrected the records for the 238 sex offenders. However, these records were shown as not incarcerated to the public from September 2002 to May 2003.

incarcerated status for some sex offenders when searching the Megan's Law database by name, and when the public searches by location, some sex offenders in prison appear to be at their last registered location.

Justice is working with Corrections to improve its process for updating records of incarcerated sex offenders, including possibly developing exception reports to identify records that are not properly updated. If Corrections could provide more detailed information, Justice could use the software program's current matching criteria to produce and review exception reports on a regular basis to identify records that have not been appropriately updated. Although Justice does not produce exception reports, it agrees that exception reports potentially could be produced and used to further analyze Corrections' data and update some records that are not updated by the software program. However, as discussed in Chapter 2, Justice claims it lacks sufficient resources to research and resolve such problems.

Justice is working with Corrections to improve its process for updating records of incarcerated sex offenders.

The Megan's Law Database Does Not Show When Sex Offenders' Records Were Updated, Limiting the Information's Usefulness to the Public

Because the Megan's Law database does not include the dates of offenders' registrations, the public has no way of distinguishing the records recently updated from those updated long ago, thereby limiting the usefulness of the information. Also, because many old records exist for offenders who have died or moved out of state, the public is led to believe that more offenders are within specific communities than actually are there.

We found that approximately 23,000 records were last updated before April 2002, and about 14,000 of those were last updated before April 1998. Often, registrants do not comply with annual registration requirements, and many offenders with outdated information are not required to register in California because they may have moved outside the State, been deported or incarcerated, or are deceased. Until recently, Justice did not have processes to routinely identify and update the records of offenders in all these categories. Further, as we discuss in Chapter 2, Justice identified 2,575 sex offenders whose records in the VCIN have indicated for more than a year that they are pending release from prison. If the dates records were last updated were shown, not only would the public be better able to recognize which duplicated records are more current, it would also better understand the usefulness and reliability of all registrant information.

If the dates the offenders last registered were shown, not only would the public be able to recognize the most current records, it would also better understand the usefulness and reliability of all registrant information.

Megan's Law defines what information must be collected and displayed by Justice and includes a catchall provision for other information that Justice deems relevant. However, according to Justice, the program it currently uses to display the Megan's Law database at local law enforcement agencies would require additional programming to add the date of last registration. While Justice agrees that additional information that allows the public to better assess each offender's risk potential would be valuable, it believes that the use of the last registration date may be easily misunderstood by the public, especially regarding sex offenders who are required to register more often than annually, such as transients or those designated as sexually violent predators. In these instances, Justice believes the date of last registration may be misinterpreted by the public to imply that an offender is in compliance with his or her registration requirements and that the listed area of residence is accurate. However, we believe that the last registration date, when combined with additional disclaimer information discussed in the next section, will assist the public in making informed decisions regarding the safety of their families.

Further limiting the public's ability to access up-to-date information on sex offenders is the belief of many law enforcement agencies that they do not have sufficient personnel resources devoted to tracking sex offenders who violate registration laws, and some law enforcement agencies do not consider tracking sex offenders to be as high a priority as other activities. Unless Justice and local law enforcement agencies expend resources to determine the true whereabouts of sex offenders who have not registered as required, the information cannot be updated. Without information in the Megan's Law database to tell them whether the last update was a week or five years ago, or a specific disclaimer explaining the possibility of outdated data, people viewing the database cannot evaluate the usefulness of the information they read.

THE PUBLIC WOULD BE WELL SERVED BY JUSTICE ATTACHING DISCLAIMERS TO THE MEGAN'S LAW DATABASE

Errors and inaccuracies are likely to continue in the Megan's Law information, given the methods for collecting and compiling the information and the failure of many sex offenders to register. Even if state and local agencies accurately reported all the information they receive, the Megan's Law database would continue to be incomplete and inaccurate as a result of sex offenders not registering as required or providing inaccurate

information when they do register. Currently, Justice includes some disclaimers in the information it provides the public. However, we believe that modifying the existing disclaimers and adding others about potential inaccuracies and errors could help the public better understand and use the data to protect themselves and their families. For example, knowing that the information has not been verified and that many sex offenders frequently relocate provides important context to a person reviewing the Megan's Law database. The following disclaimers about the Megan's Law database could assist people who view it:

- A statement that Justice compiles but does not independently confirm the accuracy of the information gathered from various sources, including sex offenders who register at law enforcement agencies and custodians who report to Justice when sex offenders are released from confinement facilities. This statement should advise the viewer that the information can change quickly, and that it would not be feasible for state law enforcement agencies to verify the whereabouts of every sex offender at any given time.

- A statement that the information is intended not to indicate the offenders' risk to the public but to help people form their own risk assessments.

- A statement that the location information is based on the "last reported location," which may have changed.

- A statement to remind viewers that a fingerprint comparison is necessary to positively identify a sex offender.

By providing the public with such clarifying information about the Megan's Law database, Justice will better ensure that those who view the data understand that its purpose is to assist the public in making decisions that will protect children and others in society who are most vulnerable to sex offenders. Currently, Justice is in the process of finalizing additional disclaimers that incorporate our suggestions and plans to make them available for those who view its Megan's Law database.

JUSTICE HAS INAPPROPRIATELY DISCLOSED THE RECORDS OF SOME JUVENILE SEX OFFENDERS

In addition to problems with the overall accuracy of the Megan's Law database, we found that Justice does not always prevent the public disclosure of juvenile sex offenders' records.

Justice erroneously disclosed to the public 42 records for sex offenders convicted in juvenile court, thwarting the additional protection and confidentiality that the Legislature has afforded to juveniles.

Specifically, Justice erroneously disclosed to the public 42 records for sex offenders convicted in juvenile courts. Although Justice has since removed these records from the Megan's Law database, by allowing the public to view them, Justice thwarted the additional protection and confidentiality that the Legislature has afforded to juveniles. Under state law, only the records of juvenile sex offenders convicted in adult (superior) court are subject to public disclosure.

Justice admitted that these errors occurred because, as previously discussed, not all personnel in its SOTP are sufficiently trained to evaluate the conviction information they receive to identify cases decided in juvenile courts rather than in adult courts, and supervisors do not review information the staff enters. Moreover, Justice may not receive adequate information from courts to determine whether the conviction was in adult or juvenile court. Our review of some of Justice's juvenile records found that most of them lacked a court disposition document that would reveal whether the juvenile offender had been convicted in a juvenile or adult court.

Recently, one of Justice's deputy attorney generals met with Youth Authority's legal counsel and agreed on a proposed solution to identifying and validating whether a juvenile sex offender was adjudicated in a juvenile court or convicted in adult court. According to Justice, when a juvenile sex offender is convicted in juvenile court, Youth Authority receives a commitment form from the juvenile court. If the Judicial Council (the body that sets policy for the State's trial and appellate courts) will agree to add a check box to the commitment form granting permission for Youth Authority to send a copy of every commitment form to Justice, the forms would then flag all juvenile sex offenders whose cases were adjudicated in juvenile court. Youth Authority agreed to support such a request of the Judicial Council. In the meantime, Justice agreed to include on its pre-registration fingerprint card a check box that Youth Authority can check if the case is a "juvenile court commitment." Justice also agreed to amend its Notice of Sex Offender Registration Requirement form to add a band at the top for Youth Authority commitment information. In addition, Youth Authority has notified its institutions and camps that they should specifically note those cases that have been adjudicated in juvenile courts when they complete the Notice of Sex Offender Registration Requirement forms.

RECOMMENDATIONS

To correctly identify and disclose information about all sex offenders, Justice should do the following:

- Continue reviewing records for which it has only the 290 offense code and update the offense codes as appropriate.

- Regularly compare its records showing the incarcerated status with information provided by Corrections to determine which sex offenders are confined and those who are no longer in confinement, continue to work with Corrections to improve this process, and produce exception reports to resolve those records in question. Justice can then update these records appropriately.

To eliminate duplicate records from the VCIN, Justice should periodically analyze its data to identify and eliminate obvious duplicates. As a first step, Justice should review the Bureau of State Audits' analysis identifying obvious duplicate records and eliminate these duplicate records.

To ensure that local law enforcement and its own staff update sex offender information appropriately, Justice should design and implement an appropriate training program.

To improve the value of the sex offender information available to the public but possibly outdated, Justice should modify the Megan's Law database to include the date the registration information was last provided.

To present the Megan's Law information to the public in a manner that represents its true nature and purpose, Justice should finalize its disclaimer information and direct law enforcement agencies to provide the disclaimers to the public members who view the Megan's Law database. The disclaimer information should include the following:

- A statement that Justice compiles but does not independently confirm the accuracy of the information it gathers from several sources, including sex offenders who register at law enforcement agencies and custodians who report to Justice when sex offenders are released from confinement facilities. This statement should advise the viewer that the information can change quickly and that it would not be feasible for California's law enforcement agencies to verify the whereabouts of every sex offender at any given time.

- A statement that the information is intended not to indicate the offenders' risk to the public but to help people form their own assessments of risk.

- A statement that the location information is based on the "last reported location," which may have changed.

- A statement to remind viewers that a fingerprint comparison is necessary to positively identify a sex offender.

To ensure that the records of juvenile sex offenders are properly classified and disclosed to the public, Justice should do the following:

- Coordinate with the Youth Authority and periodically reconcile its sex offender registry with Youth Authority information.

- Provide training to its staff regarding the proper classification of records, such as flagging juvenile records appropriately for public disclosure.

- Revise its pre-registration process with Youth Authority to include a request for court information, which can be used to properly classify juvenile records.

- Request the Judicial Council to amend its juvenile commitment form to require that Youth Authority send a copy of the form to Justice. ■

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CHAPTER 2

Although It Has Begun a Process to Improve the Information in the Megan's Law Database, the Department of Justice Still Does Not Adequately Review Sex Offender Data

CHAPTER SUMMARY

The public uses the Megan's Law database to determine the locations and numbers of sex offenders residing in its communities. However, since the State enacted its Megan's Law in 1996, the Department of Justice (Justice) has not continually reviewed the sex offender data for accuracy, contributing to thousands of errors and inconsistencies in the data presented for the public's review. Justice believes the law does not require it to review the accuracy of the information that local law enforcement agencies and courts submit. Nevertheless, because the public relies on Justice's information as protection from dangerous sex offenders, we believe Justice has not fully satisfied the Legislature's intent as stated in Megan's Law.

Recently, Justice has acted to improve the accuracy of data in the Megan's Law database, creating an eight-person assessment unit to review criminal history files of sex offenders in its Violent Crime Information Network (VCIN), from which the Megan's Law database is derived. Since January 2003, this assessment unit has been updating the offense codes of sex offenders who were given the generic 290 offense code for various reasons, such as being convicted in another state.[7] As previously explained, the VCIN classifies sex offenders' records as other, serious, or high risk and automatically classifies records with 290 offense codes as other, which means the records do not get sent to the Megan's Law database. Justice reports that, as of July 2003, the assessment unit has updated the offense codes for 351 records, and the VCIN raised the classification from other to serious for all those records. A classification of serious automatically places the sex offender's record into the Megan's Law database. Also, Justice has been

[7] The 290 offense code refers to California Penal Code, Section 290, which contains Megan's Law.

updating VCIN records by comparing them to information from other agencies. From this comparison, Justice concluded that 1,360 sex offenders' records can be removed from the VCIN because the offenders are deceased, and another 2,833 can be updated to show that the offenders are living outside the State. Finally, after Justice asked the Department of Corrections (Corrections) to help it determine the true status of 2,575 sex offenders whose records in the VCIN show a pending release from prison, Corrections determined that it discharged 921 and paroled 866 of these offenders, all of whom should be in the Megan's Law database unless they were classified as other. Further, according to Corrections, of the 866 parolees, 146 are at large and many others were turned over to the U.S. Immigration and Naturalization Service (INS) and were probably deported. Justice has said it will update these records after verifying the information from Corrections and the INS.[8]

ENSURING THE ACCURACY OF THE DATA IS NOT ONE OF JUSTICE'S PRIMARY RESPONSIBILITIES

Since the enactment of Megan's Law, Justice has not been adequately reviewing the sex offender data displayed in the Megan's Law database. State law declares the Legislature's intent that Justice continuously review the sex offender information in the Megan's Law database. However, Justice has interpreted this intent language to direct it only to continually review the accuracy of its entry of information, not of the information itself. Our legal counsel agrees with Justice that the intent language is not binding and states that because Justice is responsible for administering the Megan's Law database, it has flexibility in determining how it will fulfill the Legislature's intent that it continually review sex offender data. However, we believe Justice's review has not been adequate because the Megan's Law database is intended for the public's use in safeguarding itself from dangerous sex offenders. Further, Justice believes it does continuously review the accuracy of its own entry of information on registered sex offenders, making necessary changes in the database when warranted. According to Justice, because it is only a repository, not the originating source, of much of the Megan's Law information, it is beyond the purview of Justice to ensure that information provided by courts and registering agencies is accurate. Rather, Justice says,

According to Justice, because it is only a repository, not the originating source, of the Megan's Law information, it is beyond its purview to ensure that the information provided by courts and registering agencies is accurate.

[8] On March 1, 2003, the U.S. Immigration and Naturalization Service became part of the U.S. Department of Homeland Security and changed its name to the Bureau of Citizenship and Immigration Services.

it is the duty of those agencies to ensure that the information they provide to Justice for the database is accurate. According to Justice, it has focused its efforts on entering registration information and responding to issues when they come to its attention, but until recently has placed little attention on analyzing the information as a whole, as we did to obtain the results we discuss in Chapter 1.

Rather than analyze the sex offender information, Justice has used its resources to ensure that it complies with the multiple changes to the sex offender registration laws over the last several years. These changes have required Justice to make software changes and improvements to the VCIN it uses to compile and report sex offender registration information. For example, in 1994, two years before the enactment of Megan's Law, state law required sex offenders to register annually. Before 1994, sex offenders registered only once and updated their registration information if they relocated. In 1997, the registration law was changed to require transient sex offenders and those classified as sexually violent predators to register every 90 days and later was changed again to shorten the registration period for transients to 60 days. In 1999, state law was amended to require custodians to pre-register sex offenders they took into custody on or after January 1, 1998. According to the Bureau of Criminal Information and Analysis' assistant chief, all these changes in the law governing the registration of sex offenders required programming changes to the VCIN to properly collect and store the additional information. Appendix D lists various changes to the law and actions taken by Justice to modify its system and implement changes. Justice has also improved the public's access to sex offender information by replacing the CD-ROMs it previously distributed to law enforcement agencies (where the public can view the information) with electronic 24-hour updates downloadable from Justice's intranet.

Rather than analyze the sex offender information, Justice has used its resources to ensure it complies with the multiple changes to the sex offender registration laws over the last several years.

In addition to requiring programming changes to the VCIN, changes in the law resulted in more registration forms for Justice and local law enforcement agencies to process because sex offenders were required to register more frequently. According to Justice, between 1997 and 2001, its staff worked overtime entering sex offender registration information to keep up with the volume of paper registration forms submitted by local law enforcement agencies and custodians. For example, according to workload data provided by Justice for 1997 and 1998, local law enforcement agencies submitted an annual average of 28,000 registration update forms for Justice to process. The volume of forms submitted to Justice resulted from law enforcement agencies

not using the California Law Enforcement Telecommunication System (CLETS) to enter the information electronically. Justice's workload level dropped by 38 percent in 1999 when the law was amended to require law enforcement agencies to electronically submit sex offender registration information directly into the VCIN, and the workload decreased again by 55 percent in 2002 as more local law enforcement agencies began using the CLETS to enter registration information directly into the VCIN. However, Justice still claims that it does not have the resources necessary to fully research and resolve all the problems with the data. In fact, in addition to the registration forms it receives, Justice receives offender notification forms from officials at confinement facilities (custodians) and uses them to update records for sex offenders released from confinement.[9] Justice also receives and processes fingerprint cards and photographs of sex offenders that the law has required custodians to submit since 1998. Nevertheless, because Justice makes this information available for the public to use to protect itself from sex offenders, we believe it should do more to ensure the accuracy of the data.

JUSTICE HAS RECENTLY TAKEN SOME STEPS TO IMPROVE THE ACCURACY AND COMPLETENESS OF INFORMATION ON REGISTERED SEX OFFENDERS

Although we question the accuracy of information in the Megan's Law database, Justice has recently taken steps to improve the accuracy of the information it provides the public about registered sex offenders. One step was to create an assessment unit within its Sex Offender Tracking Program (SOTP) to review Justice's classification of sex offenders. Another step Justice took to improve registration information was to use the services of a private research firm and the assistance of other state agencies to gather information about the whereabouts of 33,296 registered sex offenders. Finally, Justice enlisted Corrections to assist in identifying the current status of more than 2,500 sex offenders shown in the VCIN as being under Corrections' jurisdiction and pending release from prison.

[9] Custodians include probation officers; officials at local jails, schools, and road camps; state prisons, youth facilities, and hospitals; and any other institutions where offenders are confined.

Justice Is Reviewing Sex Offenders' Classifications on a Case-by-Case Basis

Justice's assessment unit has identified 1,900 records with a 290 offense code and updated the offense code for 497 of these, 351 of which were raised to serious, requiring public disclosure.

In January 2003, Justice formed an eight-person assessment unit within the SOTP to review the criminal histories of sex offenders in the VCIN to determine whether their classifications under Megan's Law is still appropriate. According to Justice, the assessment unit has updated the offense codes for 497 of the 1,900 records that have the 290 offense code, as discussed in Chapter 1, raising the offenders' classifications to serious for 351 of these records. Because records classified as other are not included in the Megan's Law database and thus not disclosed to the public, the public was not aware that these sex offenders existed until these records were corrected.

An offender's classification is based on the number of convictions and the specific section of the Penal Code the offender violated. Justice has programmed the VCIN to assign a classification after the offender's conviction and offense code have been entered. However, not all records have the correct offense codes. Local law enforcement agencies and SOTP staff sometimes enter the 290 offense code when they are uncertain of the appropriate code, and the VCIN automatically classifies records with this offense code as other.[10] For example, the 290 offense code is used for sex offenders who were convicted in other states, because the sex offender registration laws are different in other states and other states' offense codes do not always clearly match California's codes.

For some records, the offense code was incorrectly entered because some codes have very similar numbers associated with different crimes. According to Justice, errors involving offense codes that include parentheses, which change the meaning of the code, are common. For example, offense code 288(a) is lewd or lascivious conduct with a child under the age of 14, and warrants a *serious* classification from the VCIN. However, if the person erroneously omits the parentheses and enters 288a, which is oral copulation, the VCIN automatically classifies a sex offender as other if that is his or her only convicted offense.

As of July 2003, there were approximately 18,000 records in the VCIN for registered sex offenders classified as other. Of this number, Justice says the assessment unit has identified 1,900 records with the generic offense code and updated the

[10] Offense code 290 is the section of the California Penal Code that contains Megan's Law.

offense code for 497 of these, 351 of which were raised to serious as of July 2003. For most of the remaining 1,403 records, Justice is waiting for responses from agencies in other states.

On a case-by-case basis, Justice reviews the records of *serious* sex offenders to determine if any records should be raised to the *high-risk* classification. The *high-risk* classification is based on the number and types of convictions as well as criteria that demand deeper analysis from Justice staff than is required for the *other* and *serious* classifications. For example, one of the criteria used to classify a sex offender as high risk is whether the individual has been convicted of two or more violent sex offenses, at least two of which were brought and tried separately. The Legislature intended that Justice continually search criminal records and identify *high-risk* sex offenders. However, according to Justice, it does this analysis on a case-by-case basis only—when local law enforcement agencies or other Justice personnel request such analyses for sex offenders they believe meet the criteria for the *high-risk* classification. In 1996, Justice requested funding for two specialist positions to identify *high-risk* sex offenders in the VCIN on an ongoing basis. Although the Department of Finance approved Justice's request in early 1997, after initially using these positions for their intended purpose, Justice redirected both positions to assist with processing sex offender registration documents. Classifying a sex offender as high risk is important because the law allows local law enforcement agencies to notify the public of the presence of these sex offenders in their communities using any means they deem necessary to ensure public safety. According to Justice, it recognizes this, but its priority at the time was to ensure that the information submitted to it was entered into the VCIN and that the Megan's Law database was complete. Also, according to Justice, after the assessment unit completes its review of sex offenders classified as other, it will do a similar review of all sex offenders classified as serious to ensure that offenders who should be classified as high risk are identified and properly classified, assuming higher priorities do not arise.

After the assessment unit completes its review of sex offenders classified as other, it will do a similar review of all sex offenders classified as serious to ensure that offenders who should be classified as high risk are identified and properly classified.

Justice Is Using Various Sources to Obtain Additional Information on the Whereabouts of Sex Offenders

The Associated Press reported in January 2003, based on information provided by Justice, that Justice did not know the whereabouts of 33,296 registered sex offenders because they had not registered annually as required. Subsequently, Justice determined that 663 of the 33,296 sex offenders had,

in fact, registered within the past year. To gather information on the locations of the remaining 32,633 sex offenders, Justice obtained the services of a data research company, which offered its services at no cost and reported its findings to Justice in March 2003. However, Justice determined that the company's findings were not sufficiently authoritative for Justice to use in updating the VCIN records because of the variety and nature of the company's information sources, which could include unofficial sources such as cable television and magazine subscriptions. Thus, Justice attempted to verify the findings of the research company by comparing sex offenders' records in the VCIN to information from other agencies. Based on the information it received, Justice confirmed that 2,833 sex offenders are living outside the State and 1,360 are deceased. Justice obtained information on deaths from the Department of Health Services (Health Services), deportations from the INS, and sex offenders living in other states from the National Law Enforcement Telecommunications Services. However, Justice received either outdated, incomplete, or no information on the remaining 28,440 sex offenders who did not register.

Justice's Missing and Unidentified Persons Unit has had an interagency agreement with Health Services since July 1, 2000, under which Justice could request information on births, deaths, and marriages. However, until 2003, Justice had not requested death information to use for updating sex offenders' records. According to Justice, previously it did not obtain the information from Health Services or the INS because it has no underlying statutory responsibility for seeking out information from these agencies. Nevertheless, Justice plans to obtain the death information from Health Services annually in the future and is currently purchasing information from the Social Security Administration to use for identifying sex offenders who died in other states.

Justice Has Begun Working With Corrections to Update the Records of Sex Offenders Whose Status of Pending Release From Prison Is Incorrect

To improve the accuracy of registration information, Justice has requested Corrections' assistance to determine the current status of 2,575 sex offenders whose records in the VCIN indicated the offenders were pending release from prison. Corrections determined that as of May 2003, it had discharged 921 of these sex offenders, paroled 866, identified 207 as either in custody or

Of 2,575 sex offenders whose records in the VCIN indicated they were pending release from prison, Corrections determined that, as of May 2003, it had discharged 921 of these sex offenders, paroled 866, identified 207 as either in custody or deceased, and could not identify the remaining 581.

deceased, and could not identify 581 as offenders in its jurisdiction. Further, according to Corrections, of the 866 parolees, 146 are at large, and many of those discharged or paroled were turned over to the INS and probably deported.

State law requires that not later than 45 days before releasing a sex offender from incarceration or confinement, a custodian must notify the offender of his or her lifetime requirement to register, and the custodian must obtain the address where the sex offender expects to reside and report it to Justice along with a current photo of the offender. To accomplish this, every sex offender must complete and sign a notification form. The custodian is required to send a copy of the form to Justice and another copy to the law enforcement agency with jurisdiction over the address where the sex offender expects to reside on release. Justice uses the address information offenders provide on the notification forms to update addresses in the VCIN and to update sex offenders' status from incarcerated to pending release. However, of the 2,575 records Justice identified as pending release, nearly 1,800 had been in this pending status for more than a year at the time Justice requested information from Corrections, and according to Corrections' data, 1,787 of these offenders had already been released. As a result, the VCIN records indicated the sex offenders were incarcerated when they were not.

Corrections believes that one reason for the erroneous status of these sex offender records is Justice's policy regarding how the notification form should be completed. Specifically, some sex offenders are uncertain where they will be living after they are released from prison and thus cannot provide addresses on the notification forms. Also, address information is not always known for offenders who are transient or are transferred to the INS, the Department of Mental Health, or other agencies in or out of the State. In these instances, Justice instructs Corrections to mark these offenders' expected address as "address unknown." However, Justice agreed to work with Corrections to establish procedures to identify those sex offenders who are transferred to the INS. In addition, Justice informed us that it would verify the information it received from Corrections and the INS and update its records when appropriate.

RECOMMENDATIONS

To ensure that it updates records of sex offenders who are deceased or deported, Justice should continue to work with Health Services, the INS, and other public agencies to obtain this information and update sex offenders' records.

To fully satisfy the intent of the Legislature that it continually review the Megan's Law information for accuracy, Justice should design and implement a program to regularly check the data as a whole for inconsistencies and periodically reconcile the data with other reliable information.

We conducted this review under the authority vested in the California State Auditor by Section 8543 et seq. of the California Government Code and according to generally accepted government auditing standards. We limited our review to those areas specified in the audit scope section of this report.

Respectfully submitted,

ELAINE M. HOWLE
State Auditor

Date: August 20, 2003

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APPENDIX A

Convicted Sex Offenders Must Certify That They Have Been Notified of and Understand Their Responsibility to Register

Sex offenders are required to initial each of the following registration requirements, which are on the notification and change of address forms that sex offenders are required to complete before release from confinement and when registering thereafter. By initialing these requirements, convicted sex offenders certify that they have been notified of and understand their responsibility to register.

For Sex and Arson Offenders:

- My responsibility to register is a lifetime requirement.
- Upon coming into, or when changing my residence or location within, any city, county, or city and county in which I am residing or located, I must register with the law enforcement agency having jurisdiction over my residence or location within five working days.
- When changing my residence address, either within California or out of state, I must inform the registering agency with which I last registered of the new address within five working days.

For Sex Offenders Only:

I understand it is my duty to know the legal requirements of California Penal Code, Section 290, including changes to the law that may be made in the future. These requirements include, but are not limited to, the following:

- Upon release from incarceration, placement, or commitment, within 5 working days, I must register, or reregister if I have previously registered, with the law enforcement agency having jurisdiction over my location or place of residence.
- I must annually, within 5 working days of my birthday, go to the law enforcement agency having jurisdiction over my location or place of residence and update my registration information.

- I must disclose I am a registered sex offender to the licensee of a community care facility before becoming a client of that facility.

- I must disclose I am a registered sex offender if I apply for or accept a position or do volunteer work for a person, group, or organization where I work directly with minor children.

- Within 5 working days of changing my name, I must notify the law enforcement agency having jurisdiction over my location or place of residence.

- If I move out of California, I am required to register in any state in which I am located or reside, within 10 days, with the law enforcement agency having jurisdiction over my residence or location.

- If I attend school or am employed in another state, I must register with the law enforcement agency in the state having jurisdiction over the school or employment location in addition to registering in my state of residence.

- If I have no residence address, I must update my registration information at least once every 60 days and annually within 5 working days of my birthday, including my employer's name and address.

- If I have ever been designated a sexually violent predator, I must update my registration information at least once every 90 days and annually within 5 working days of my birthday, including my employer's name and address.

- If I have been convicted of a felony sex offense and I have not previously given DNA samples, I am required to submit two specimens of blood, a saliva sample, a right thumbprint, and a full palm print of each hand.

- I must provide proof of residence with a California driver's license or identification card or a recent rent or utility bill. This proof is required within 30 days of registration.

- If I am a parolee, I must provide proof of registration to my parole agent within 6 working days of release on parole.

- If I am residing or I am located on a campus of the University of California, the California State University, or a community college, I will register with the chief of police of the campus in addition to registering with the local law enforcement agency having jurisdiction over my residence or location.

- If I have more than one residence address or location, I must register all addresses and/or locations with the agency or agencies having jurisdiction over them.

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APPENDIX B

Survey of Local Law Enforcement

We surveyed 12 local law enforcement agencies (agencies) and received responses from 10 about their use of the Megan's Law database and their use of the California Law Enforcement Telecommunication System (CLETS) to make entries into the Violent Crime Information Network (VCIN). We asked each of the agencies a number of questions, including the following:

1. Does your department use CLETS to update sex offender information for all address changes and registration information updates into the VCIN?

   YES: 10 NO: 0

2. Does your department update CLETS data in-house, or does your department rely on another agency to update this information?

   In-house: 8 Another agency: 2

3. What term best describes how often your agency checks the VCIN for sex registration violations when a person is arrested, even for a non-sex-related offense?

   All: 5

   Most: 3

   Some: 2

   None: 0

4. When a record check or search in the VCIN reveals an error or out-of-date registration information for a sex offender, do you routinely update and correct the information?

   YES: 8 NO: 2

5. Do you routinely investigate sex offenders to identify and update the records of those who are deceased?

   YES: 6 NO: 4

The agencies' responses allowed us to better understand the varying degrees to which they use the Megan's Law database and enforce Megan's Law violations. All the agencies we spoke to indicated that they use CLETS to update sex offender registration information in the VCIN. Also, eight agencies indicated that they check the VCIN all or most of the time when they arrest a suspect, even for a non-sex-related offense.

We asked the law enforcement agencies about seeking warrants and prosecutions for sex registration violations, and generally they told us that after exhausting other leads to locate an offender who has not registered, they will seek a warrant for the offender's arrest, except in certain circumstances, such as when they believe an offender has moved out of their jurisdictions. Further, some agencies told us that the final decision on whether to seek a warrant and prosecute an offender for a registration violation rests with the local district attorney. In addition, several agencies explained that they do not have adequate staff assigned to register and track offenders. Despite some differences in their processes for tracking and registering of sex offenders, the agencies generally are attempting to register convicted sex offenders residing within their jurisdictions and improve the accuracy of the data in the Megan's Law database.

APPENDIX C

The Current Legislature Has Proposed Numerous Bills That Address Sex Offender Registration

We found 30 bills that address sex offender registration and/or the dissemination of that information proposed in the current session of the Legislature. Some bills focus more than others on the accuracy of the sex registry data. This proposed legislation addresses issues of accuracy in various areas that include the following:

- Requiring sex offenders to renew their driver's licenses more frequently.
- Increasing sex offenders' accountability to parole officers.
- Additional funding for enforcing sex offender registration requirements.
- Additional requirements for law enforcement agencies to verify address information.
- Additional requirements for law enforcement agencies to report sex offender information to the Department of Justice.

TABLE C.1

Pending Legislation Concerning Sex Offender Data

Bill	Description
AB 26	Would require the Department of Justice (Justice), on or before October 15, 2005, to provide specified information regarding registered sex offenders on an Internet Web site. Would also provide money from the General Fund to Justice for deploying the Web site.
AB 27	Would eliminate the currently scheduled repeal of California's Megan's Law (California Penal Code, Section 290.4) and would state the Legislature's intent to consider posting information about sex offenders on the Internet.
AB 350	Would require the Department of Motor Vehicles (DMV) to include in the driving record and vehicle registration records of every sex offender an annotation that the person has been so registered and require the registered sex offender to provide DMV with his or her residence address as a mailing address.
AB 402	Would extend the expiration of existing public notification provisions to January 1, 2007.

continued on next page

Bill	Description
AB 417	Would require sex offenders to renew their driver's licenses annually and provide a current photograph and address verification for original licenses and for each renewal.
AB 488	Would expand the list of sexual charges for which adults are required to register and the analogous list for juveniles. Concerning the disclosures that law enforcement agencies can make regarding high-risk sex offenders, would permit the disclosures to be made on all registered sex offenders, eliminate the requirement that the disclosures be made in certain instances only to people the offenders are likely to encounter, and expand the information that may be disclosed to include the dates registrants last registered or reregistered, whether the registrants have complied with the registration requirements, and the registrants' volunteer status with any institutions of higher education. In addition, this bill would extend the existing public notification provisions until July 1, 2005, when Justice would be required to provide specified information about listing offenders on the Internet and updating that information on an ongoing basis.
AB 726	Would remove the January 1, 2004, repeal date of public dissemination provisions and require Justice to make specified information about registered sex offenders available on the Internet.
AB 876	Would remove the January 1, 2004, repeal date and require Justice to make specified information about registered sex offenders available on the Internet. Would also require that Justice organize its list of *serious* and *high-risk* sex offenders to allow an individual to determine the location of *serious* and *high-risk* sex offenders within a half mile of a particular map point that would be available to the public via CD-ROM, the Internet, or other electronic notification.
AB 891	Would impose fines on sex offenders and allow transfer of fine revenue to local governments for enforcement activities.
AB 966	Would require Justice to make information regarding persons identified as sexual habitual offenders available to the public on the Internet.
AB 1098	Would add requirements for sex offenders' reporting to probation officers regarding proof of registration with local law enforcement. Currently, only parolees are required to provide certain proof of registration. Would also require every person who is released on parole or probation to provide proof of any revision or annual update so long as that person is required to be under the supervision of a probation or parole officer.
AB 1184	Similar to AB 26 (see page 53).
AB 1205	Would require a community program director to provide pre-placement notification to the relevant local law enforcement agency regarding the outpatient status of convicted sex offenders.
AB 1224	Would state the intent of the Legislature to enact legislation that would allow access to sex offender information via the Internet and a toll-free telephone number.
AB 1313	Would authorize campus police at state universities and community colleges or, if campuses do not have police departments, local law enforcement agencies to release specified information regarding the presence of sex offenders on campus.
AB 1314	Would extend the expiration of provisions for public dissemination specified information about registered sex offenders to January 1, 2007.
AB 1441	Would appropriate $15 million for distribution to law enforcement for the implementation of county and regional Sexual Assault Felony Enforcement teams to reduce violent sexual assault offenses.
AB 1444	Would require all convicted sex offenders to provide DNA samples to Justice, not just felony sex offenders.
AB 1445	Would require every juvenile offender adjudicated a ward of the court for the commission or attempted commission of a specified sexual offense to register as a sex offender, whether the juvenile was discharged or paroled from the Department of the Youth Authority or another facility.
SB 52	Similar to AB 1441 above.
SB 327	Would require Justice to provide specified information about registered sex offenders on the Internet.
SB 356	Would include school district police departments in the list of designated law enforcement entities for advising the public of the presence of high-risk sex offenders.

Bill	Description
SB 421	Would require local law enforcement to verify sex offenders' information by contacting them at their residences.
SB 422	Would require Justice, beginning July 1, 2004, to provide specified information about registered sex offenders on the Internet.
SB 423	Would require law enforcement entities where sex offenders register to inform the public of the presence of *high-risk* sex offenders.
SB 424	Would require local law enforcement to compile and deliver a biannual report to Justice for reconciliation of sex offender registries.
SB 650	Would remove the January 1, 2004, repeal date regarding public dissemination of sex offender information.
SB 775	Similar to SB 423 above.
SB 879	Would add child pornographers to the list of persons who are required to register as sex offenders.
SB 885	Similar to SB 650 above.

Source: www.leginfo.ca.gov as of July 22, 2003.

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APPENDIX D

Legislation Affecting the Sex Offender Registration Process and Other Improvements Have Added Programming and Maintenance Requirements for the Department of Justice's Information Systems

According to the manager of the Violent Crime Information Center, the Department of Justice (Justice) has had to continually accommodate new legislative requirements and improvements to its sex offender registry by modifying its Violent Crime Information Network (VCIN). Table D.1 lists several modifications Justice made to the VCIN, most of which resulted from legislative mandates.

TABLE D.1

History of Changes Made to the Violent Crime Information Network

Year	Additions and/or Changes	Legislative Reference
1994	The Legislature established the concept for the Violent Crime Information Network (VCIN). It required the Department of Justice (Justice) to establish and maintain a network that would enable its crime analysts to electronically share their data, analyses, and findings on violent crime cases with each other and to electronically provide law enforcement agencies with information to assist in the identification, tracking, and apprehension of violent offenders. The Legislature intended that the VCIN would integrate existing state, federal, and civilian databases into a single comprehensive network.	Chapter 6, Statutes of 1994 (SBX1 12), "Thompson-Presley Violent Crime Information, Investigation, and Technology Act"
	New legislation created the Child Molester Identification Line "900 number" telephone service and required Justice to maintain a subdirectory of persons deemed to be sexual habitual offenders and threats to the public safety.	Chapter 867, Statutes of 1994 (AB 2500), "Child Protective Act of 1994"
	New legislation required sex offenders to register annually.	Chapter 865, Statutes of 1994 (AB 3513)
1996	Justice implemented the VCIN and made it available to law enforcement agencies via the California Law Enforcement Telecommunication System (CLETS).	

continued on next page

Year	Additions and/or Changes	Legislative Reference
	California's version of the federal Megan's Law was enacted. Justice reprogrammed the VCIN to allow for extracting Megan's Law data onto CD-ROMs for public viewing. The new law added offenses that require registration.	Chapter 908, Statutes of 1996 (AB 1562)
	A new law changed annual registration time requirements from within 10 days to within five working days of the offender's birthday and from within 14 days to within five working days of coming into a city or county. Justice reprogrammed the VCIN to accommodate these new requirements.	Chapter 909, Statutes of 1996 (SB 1378)
	Justice added the Supervised Release File (parole records) to an individual violent offender's records in the VCIN, which necessitated a new VCIN design and an increase in record maintenance.	
1997	Requirements for transients and sexually violent predators was enacted, requiring such individuals to register every 90 days. In addition, the new legislation required the Department of Corrections, the California Youth Authority, the Department of Mental Health, and probation departments to pre-register sex offenders on incarceration, placement, or commitment, or on release to probation. Justice reprogrammed the VCIN to accept and store this new data.	Chapter 821, Statutes of 1997 (AB 290)
1999	New legislation required sex offenders to submit concurrent address information, meaning that when a registrant has more than one residence, that registrant must register each address with the law enforcement agency having jurisdiction over that residence. Consequently, the VCIN needed this capability. Due to the limitations of the VCIN, this capability has not been fully implemented as of May 28, 2003.	Chapter 901, Statutes of 1999 (SB 341)
	Justice began to Web-enable the VCIN system. In addition, Justice reprogrammed the VCIN to meet the functionality requirements of the federally mandated interface with the national Convicted Sexual Offender Registry File.	
2000	Justice began to implement its Web-enabled version of the VCIN application.	
2001	A new law required sex offenders to register at university campuses when enrolled as students, volunteers, or employees.	Chapter 544, Statutes of 2001 (AB 4)
	New law lowered the registration period for transients from 90 to 60 days.	Chapter 485, Statutes of 2001 (AB 1004)
	Justice replaced monthly CD-ROMs with an Intranet distribution of the Megan's Law database.	

Agency's comments provided as text only.

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August 1, 2003

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RE: BSA Audit 2003-105: Violent Crime Information Network (VCIN)/Megan's Law; Departmental Response to Final Report

Dear Ms. Howle:

The Department of Justice (DOJ) has reviewed the Bureau of State Audit's (BSA) draft report to be issued on the Violent Crime Information Network (VCIN)/Megan's Law database. On behalf of Attorney General Bill Lockyer, we are responding to your draft report.

Over the course of the past five months, DOJ has worked closely with Bureau of State Audits staff in their review of the Department's Violent Crime Information Network (VCIN)/Megan's Law database. On-site unrestricted access to program personnel and the database itself, coupled with discussions with local law enforcement agencies and various state and federal organizations, have provided audit staff with a unique perspective to respond to the Joint Legislative Audit Committee's questions concerning the VCIN/Megan's Law database.

After reviewing the draft final report, we feel that it is important to provide the Joint Legislative Audit Committee with additional and clarifying information to ensure that the Committee members have a complete understanding of what DOJ is statutorily required to do as well as most efforts DOJ has made above and beyond what is required. Equally important is their understanding of past and present funding, resource, and database system limitations; the magnitude and complexity of the VCIN/Megan's Law operation; the number of agencies involved; departmental achievements and improvements to date; and DOJ's plans to improve and maximize the efficiency and responsiveness of the current system. To that end, DOJ is pleased to have this opportunity to include its comments as part of the final report to the Committee.

* California State Auditor's comments begin on page 75.

REPORT OVERVIEW

DOJ feels that the examination process underlying an audit effort of this type should raise operational and procedural questions and suggestions for improvement designed to help strengthen the program. To accomplish this, the report's content must give the reader a clear understanding of the scope of the programmatic challenge underlying the particular subject matter being examined. In this case, the Sex Offender Registration Program has a long statutory history dating back to the 1940's. Currently containing historical information on approximately 98,000 sex offenders, the content of these files is reflective of millions of cumulative transactions supplied by hundreds of state and local law enforcement agencies over the years. Because of the recidivistic nature of such criminal behavior, sex offender registration is a lifetime obligation and relies upon the voluntary compliance of these individuals. Recognizing the stigma attached to being a registered sex offender, and the fact that the vast majority are unsupervised, law enforcement's ability to monitor the whereabouts of these individuals can be difficult at best. Unfortunately, non-compliance with registration requirements can pose serious public safety risks.

DOJ believes the final report does not give adequate weight to the complexity of the environment within which law enforcement is forced to operate. In addition to meeting a myriad of competing program demands to ensure public safety, local and state agencies have been dealing with significant budgetary cutbacks and associated personnel reductions. This reality has made it extremely difficult to retain and/or replace employees who have the depth of knowledge so critical to solving the unique technological and practical problems associated with sex offender tracking. Budgetary restrictions and cutbacks also have adversely affected efforts to repair, enhance, or renovate underlying database systems. Relying on hundreds of agencies to electronically report sex offender tracking information requires a system that can handle the demands of a changing environment that provides for continued interface with reporting agencies, while also remaining simple and cost-effective to use.

In its recommendations, BSA focuses on a number of areas including suggested improvements to help minimize database inconsistencies between the VCIN/Megan's Law database and submitting agencies, to provide additional training for local agencies to avoid the submission of duplicate records, to include additional disclaimers for the public, to deal with generic "PC 290" reported offenses, to include "date of last registration" as part of registrant information made available to the public, and to work with the federal Department of Homeland Security/Bureau of Citizenship and Immigration Services to identify deportees. In summarizing these recommendations, the audit report leaves the reader with the mistaken impression that DOJ has made no effort in addressing some of these issues. By providing only passing reference to improvements that DOJ has made to the program as well as efforts currently underway to improve the system and enhance the quality of data in the VCIN/Megan's Law database, the report distorts and understates the effectiveness of the program. A more complete discussion of these facts at the beginning of the report would provide a more accurate context in which to place DOJ's efforts in this area.

The VCIN/Megan's Law database and statutes that serve as its foundation, are designed with the underlying expectation that contributing agencies have a major role to play, inasmuch as the quality of the information in the database depends on the accuracy of the information these agencies are statutorily required to gather and submit to DOJ for recording. DOJ plays its own significant role in this process by designing, modifying and deploying a database to serve as a repository for the information submitted. While continuing efforts are made to ensure the reliability of the system, make enhancements in response to statutory and law enforcement needs, and improve the electronic submission and use of VCIN/Megan's Law information, many of the audit report's findings and recommendations are based upon the mistaken premise that DOJ is also inherently responsible for the accuracy of the data which submitting agencies provide. This was not intended by the Legislature, nor is it possible for DOJ to assume such responsibility, except to do what is possible to make it easier for submitting agencies to provide accurate and current data.

While our legal experts have responded at length to questions concerning legislative intent, BSA audit staff have steadfastly held to their position that the accuracy of submitted data is also DOJ's responsibility. Although the report acknowledges that the audit staff's own attorney agreed with DOJ legal counsel that the statute provides DOJ with the flexibility for determining how best to review sex offender data provided to it, the report nevertheless faults DOJ for not ensuring the accuracy of the information provided to it by outside agencies. Audit staff have maintained that DOJ still has the obligation to ensure the accuracy of information submitted by agencies because "the database is intended for the public's use in safeguarding itself from dangerous sex offenders." The database represents a partnership with submitting agencies and cannot function otherwise. DOJ continuously works toward improving the system, making design changes to minimize errors and facilitate data entry, providing problem resolution assistance, training local agencies, suggesting statutory improvements, and responding to public needs. However, the underlying accuracy of the information submitted to DOJ still remains and must remain the responsibility of the submitting agency. This is no different from other departmental automated databases (e.g., wanted persons, restraining orders, criminal history, stolen property).

While DOJ continues to develop methods to assist agencies, the report fails to make specific recommendations as to the actions other agencies should take to help remedy the accuracy of the data in the VCIN/Megan's Law database. Specific recommendations as to compliance by the agencies that have responsibility for obtaining the information needed to update the database would have greater impact on attaining more accurate and timely data entry than recommending that DOJ guarantee the accuracy of someone else's data. To place the burden of inherent inefficiencies and compliance failures totally on DOJ is simply wrong and entirely ignores the root cause of the problem(s) at the source, where statutory responsibility resides. Such inappropriate expectations of DOJ have extended to the audit report which faults the Department for its failure to properly train its employees to request court dispositions for juvenile offenders when, in reality, compliance by the courts with their statutory responsibility to furnish such documents to DOJ would avoid a labor intensive search in every case.

Although the auditors were charged with evaluating whether local law enforcement agencies were implementing the registration law and VCIN/Megan's Law in a manner which maximized the data's accuracy, the report based its conclusions on information from only ten agencies, out of the more than 400 submitting agencies with registration responsibilities. The BSA survey conducted among these ten agencies did not evaluate the quality of data submitted even by these agencies. The auditors also did not evaluate or sample the quality or accuracy of data submitted by the courts, the California Department of Corrections (CDC), the Department of Mental Health, county jails, probation officers, and other agencies that provide sex offender data which DOJ is required to record in the VCIN/Megan's Law database.

In DOJ meetings with audit team staff, extensive discussions were held on projects of great significance currently underway which received no mention in the final report. Senior audit team staff felt that these topics were "beyond the scope of the study." This does not appear consistent with the Legislative Committee's request and the documented scope and objectives of the audit which contains "but not limited to" inclusionary language. DOJ believes that these projects will have significant impact on sex offender reporting and database accuracy, and that they reflect the Department's ongoing efforts from the onset to improve the VCIN/Megan's Law database. We believe these projects not only clearly fall within the scope of the audit, they also provide insight to the Committee so that its members may more fully understand DOJ's commitment in this area.

Projects currently underway within DOJ include: 1) sex offender Live Scan entry capability, 2) subsequent arrest notification, and 3) VCIN/Megan's Law Database Renovation Budget Change Proposal (BCP). The Live Scan project will provide for instantaneous fingerprint confirmation to ensure a sex offender's correct identity and CII number, eliminate duplicate entries, and facilitate electronic entry and transmission of sex offender tracking information by local agencies to the VCIN/Megan's Law database. The subsequent arrest project will automatically provide arrest/ disposition information from DOJ's Automated Criminal History System (ACHS) on all sex offenders as it occurs for use by DOJ's recently established Megan's Law Assessment Unit. This information will serve as an additional tool by which DOJ can monitor a registrant's category designation (other, serious, high-risk) and possible incarceration. The VCIN Renovation BCP is a critical component of DOJ's plans for system improvement and fundamental for ensuring an adequate operational foundation for the VCIN/Megan's Law database. Specifically, the BCP will provide the database infrastructure to be updated to efficiently operate under the statutory demands imposed upon it over the years. It will establish a web-enabled environment for use by contributing agencies and be capable of responding to future needs placed upon it by the Legislature, the Attorney General, and the law enforcement community. The audit team's decision not to comment on these issues leaves the reader with an incomplete assessment of the program, relevant issues, and the Department's efforts to solve problems.

The Department has also taken the initiative in letting agencies know when sex offenders have fallen into violation status, although no state requires this service and no funds have been provided to create or operate it. Should a registrant not comply with the renewal of their registration requirements, an electronic message is automatically transmitted to the law enforcement agency where the registrant was last reported to reside. This is intended to serve as an enforcement aid

to that jurisdiction so that they might determine the location of the offender, ensure prompt renewal compliance and/or initiate prosecution or parole revocation proceedings as may be deemed appropriate. Rather than acknowledge the value of this automatic notification system, the report asserts that this system is "unreliable." This conclusion is drawn on the basis that offenders who are incorrectly reflected in the VCIN/Megan's Law database as incarcerated will not be included as part of this automatic notification system. However, this problem is not inherent to the system, but simply another result of DOJ not receiving accurate and timely information from the CDC to properly reflect the incarcerated status in the database. While this system may not be all-inclusive because of data submission issues with CDC, the thousands of electronic notifications that have been generated are themselves essentially accurate and reliable. Since the notification process was implemented in January, 2003, over 19,000 violation notifications have been sent out to local agencies via the California Law Enforcement Telecommunications System (CLETS). DOJ considers this to be a very useful reminder system and consistent with its inherent role to assist agencies in meeting their statutory obligations.

DOJ believes that the Committee should also be made aware of other significant improvements made to the system to assist law enforcement in monitoring the location of sex offenders and their possible undisclosed movement throughout the State. Working with the Department of Motor Vehicles (DMV), flags have been placed on the DMV records of sex registrants so that should a registrant reflect a change in their last reported address when they renew their license or attempt to obtain a new license with a new address, the law enforcement agencies in the new and previous jurisdictions where the registrant resided are electronically notified of this change in location. Once again, this is a clear example of the assertive efforts DOJ has made to help local agencies in obtaining the most current and accurate information about registrants in the VCIN/Megan's Law database.

Recognizing that the audit request originated with the Joint Legislative Audit Committee and that sex offender tracking has historically been a subject matter which attracts substantial legislative interest each year, the Department was disappointed that the audit team's review of past legislation and current law failed to disclose any statutory shortcomings that hinder the accuracy of sex offender data. In light of the report's comment about statutory inconsistencies in local custodial agency reporting requirements when they take a sex offender into custody, it would seem appropriate for the audit team to suggest legislative remedies to deal with these problems. This is an area that DOJ intends to discuss further with its legal and legislative personnel. The audit team's assessment as to whether legislation under consideration this session could impact such accuracy consisted of a simple acknowledgment that some measures "may" have an impact on accuracy. In light of concerns about various accuracy issues and non-compliance by tens of thousands of registrants, more insight or opinions into possible legislative remedies would be of greater value to the legislative committees than a simple list of bills in the appendix.

One of the main concerns prompting the audit of the VCIN/Megan's Law database was the disclosure that, throughout the nation and including California, a substantial number of registrants have been out of compliance for some time. The final report indicates that 14,000 of California's registrants had not been updated for over four years. In actuality, this is not a matter of DOJ

failing to update these records but, more accurately, a situation where such individuals have not complied with their statutory obligation to register. While the report spends considerable time focusing on issues and recommendations regarding the pool of current registrants rotating between incarcerated and released status, no comments or suggestions are provided to the Committee to deal with the long-term non-compliance problem. Other than mentioning current departmental efforts underway to secure information on deceased, deported, or out-of-state registrants, nothing of a positive nature was suggested or even acknowledged by the audit team to deal with this issue.

DISCUSSION POINTS

The following section briefly addresses many of the issues and recommendations raised by the report. In most cases, you will find that the Department has enthusiastically been working toward these common goals or has embraced the report's recommendations and is in the process of implementing them. We have also taken the liberty of including a copy of DOJ's letter* previously sent to you on July 7, 2003. We feel that its contents provide valuable supplemental information on a number of issues discussed in the report (see Enclosure 1: Auditor's Request for Confirmation of Information).

CHAPTER 1

It should be noted that some recommendations are listed twice in the State Auditor's report. The number of recommendations listed in the Executive Summary do not match the number of recommendations listed in the body of the report, nor is the wording within the recommendations consistent. When the wording differs, both recommendations are presented under the subject heading.

1. Public Disclosure of Juvenile Offenders.

BSA's Recommendation: "To ensure that sex offenders who have been released from Youth Authority have registered, Justice should periodically reconcile its sex offender registry with Youth Authority information."

BSA's Recommendation: "To ensure that the VCIN contains records of all registrable sex offenders who have been released from Youth Authority, Justice should coordinate with the Youth Authority and periodically reconcile its sex offender registry with Youth Authority information."

BSA's Recommendation: "To ensure that juvenile sex offenders' records are properly classified and disclosed to the public, Justice should do the following: 1) Provide training to its staff regarding the proper classification of records, such as flagging juvenile records appropriately for public disclosure. 2) Revise its pre-registration process with Youth

* This letter is available for review at the Bureau of State Audits.

Authority to include a request for court information, which can be used to properly classify juvenile records. 3) Request the Judicial Council to amend its juvenile commitment form to require that Youth Authority send a copy to Justice."

DOJ's Response: The report accurately notes that when processing juvenile record information, DOJ staff did not always take the necessary steps to properly differentiate between offender records that should be disclosed to the public, and those that should not. While the number of such situations was found to be relatively small, DOJ moved quickly to correct the errors, provide additional training to staff and implement remedial procedures. In addition, the California Judicial Council has approved DOJ's request to authorize the California Youth Authority (CYA) to regularly provide the specific court disposition information that we need to properly categorize juvenile offenders. Reporting documents are being modified to record this information. DOJ will assess the feasibility of synchronizing data with CYA on a periodic basis to verify the correct record status for these offenders.

2. Processing of PC 290 Registration Documents.

BSA's Recommendation: "To ensure it correctly identifies and discloses information about all sex offenders, Justice should continue researching records to learn the details of the sex offender crimes and accurately reflect this in the database."

BSA's Recommendation: "To ensure it correctly identifies and discloses information about all sex offenders, Justice should continue reviewing records for which it has only a 290 offense code and update the offense codes as appropriate."

DOJ's Response: The report states that there have been excessive delays in DOJ's processing of sex offender documents containing the generic offense of PC 290. It points out that these offenders are not subject to public disclosure until staff can obtain court information reflecting an offense confirming the offender's "serious" status. This is a time-consuming task that often requires the assistance of out-of-state agencies. Recognizing the importance of determining the proper risk category of these offenders, DOJ was successful in securing funding through a FY 2002/03 Budget Change Proposal to permanently establish the Megan's Law Assessment Unit. The "290" sex offender records are receiving the dedicated attention of this unit since it was established in January 2003. Of the initial 1,900 records, 351 were completed as of July 2003. Most of the records still to be processed involve out-of-state offenses which require the time-consuming process of acquiring necessary out-of-state court documentation. Reconciling these records is a priority since the outcome could be their inclusion on the VCIN/Megan's Law database. It is important to note that the reference to the "13-month average" processing period ignores the fact that resources for this task became available only six months ago.

3. **Improve process with the California Department of Corrections (CDC) to determine data discrepancies and which sex offenders are no longer in confinement.**

BSA's Recommendation: "To ensure it correctly identifies and discloses information about all sex offenders, Justice should regularly compare its records showing an incarcerated status with information provided by Corrections to determine which of these sex offenders are no longer in confinement. It can then update these records appropriately."

BSA's Recommendation: "To ensure it identifies and updates records of sex offenders confined in prisons, Justice should continue to work with Corrections to improve this process and produce exception reports to resolve those records in question."

BSA's Recommendation: "To ensure it correctly identifies and discloses information about all sex offenders, Justice should regularly compare its records showing an incarcerated status with information provided by Corrections to determine which of these sex offenders are no longer in confinement; continue to work with Corrections to improve this process, and produce exception reports to resolve those records in question. Justice can then update these records appropriately."

DOJ's Response: The report cites discrepancies between DOJ and the CDC in the number of sex offenders shown as incarcerated and those shown as released from custody. To address this problem, the report recommends that DOJ take the following actions: 1) modify the criteria used to match records between the two agencies so they are less restrictive; 2) generate exception reports to identify records that are not properly updated; and 3) compare records with the CDC to determine which offenders are no longer incarcerated.

DOJ has determined that a less restrictive match criteria would not be reliable for programmatic database comparison since it would result in an overwhelming number of false matches. Any corresponding validation of records listed in exception reports would require substantial, time-consuming analysis by program staff. Given existing resource limitations and other program priorities, this alternative does not appear to be useful or effective.

DOJ criteria currently includes a match of the CII number, four letters of the last name, and the first letter of the first name. Contrary to the audit staff's assertion, last names with less than four letters are automatically searched and could be matched. It is only in situations where longer last names are searched that the matching of four or more letters is required.

It should be noted that during the last two years, DOJ has been working closely with the CDC in developing a more reliable, fingerprint-based system for transmitting registration information regarding the incarceration and pending release of sex offenders. System development is now underway to employ electronic fingerprint (Live Scan) terminals at CDC's intake centers so that new registrants will be positively identified through automated

comparisons with existing fingerprints at DOJ. Prior to release, a form containing a digitized thumb print of these offenders will be submitted. This system, which is expected to be implemented by the end of 2003, is intended to facilitate a more accurate accounting of registrants as they enter and leave CDC's custody. This is a good example of the appropriate role that DOJ can play in facilitating the data-entry process and minimizing errors on the part of contributing agencies.

As noted in the report, DOJ and CDC have instituted a system to programmatically update the VCIN/Megan's Law database to reflect the incarcerated status of sex offenders. This system has been an extremely cost-effective alternative to requiring CDC staff to manually enter this data on individual records. However, DOJ does not agree with the report's recommendation that CDC's database should be used as a basis for removing the incarcerated status from sex offender records. We believe that the "Notification of Sex Offender Registration Requirement" form, which the CDC is required to submit prior to an offender's release, should continue to be used for this purpose. This form contains critical information about the offender's release, including the jurisdiction where the offender intends to reside.

It is unfortunate that the report faults DOJ for the inherent, unavoidable limitations of this automated process while neglecting to acknowledge that it is through the initiative of both DOJ and CDC that this creative process has resulted in tremendous efficiency and cost-savings.

Through a programmatic comparison, DOJ has identified a number of records which, based on CDC's data, should be modified to reflect that the offender is no longer incarcerated. After further analysis of these records, DOJ plans to forward pertinent information to the CDC and, if applicable, solicit the documentation needed to reflect each offender's correct status in the VCIN/Megan's Law database.

4. Duplicate Records.

BSA Recommendation: "To ensure that its database does not contain duplicate records, Justice should periodically analyze its data to identify and eliminate likely duplicates and eliminate them."

BSA Recommendation: "To ensure that its database does not contain duplicate records, Justice should periodically analyze its data to identify and eliminate obvious duplicates. As a first step, Justice should review the Bureau of State Audits' analysis identifying obvious duplicate records and eliminate these duplicate records."

DOJ's Response: The report correctly notes that the VCIN/Megan's Law database contains duplicate records and that this problem is primarily attributed to improper data entry practices by local agencies. However, it unfairly concludes that DOJ is largely responsible for this problem on the basis that it has not properly trained local agency

personnel and it has not expended the resources to identify and correct these record errors. DOJ has actually provided substantial training. (See Response #5). Registering agencies should be accountable for ensuring that their staff follow DOJ's instruction manuals and other reference materials relating to proper data-entry procedures. If these agencies fulfilled their responsibilities, duplicate records would be rare.

The audit report should have mentioned that DOJ has long identified and corrected numerous duplicate records through a weekly computer run that cross-checks the reported CII number, which is a unique number assigned to each individual in DOJ's criminal history system. When the CII number is submitted with new registration data, any duplicate records that are established are quickly detected and manually merged with the existing record. This process has effectively eliminated all duplicate records containing the correct CII number.

It is important to understand that any data other than fingerprints, such as the subject's reported name, date of birth, and physical descriptors, do not provide a reliable basis for identification. Criminals often have numerous names and aliases which, even if searched in combination with date of birth and descriptors, would typically generate multiple possible matches that must undergo a labor-intensive validation process. Without the benefit of positive identification through fingerprint verification, such efforts always retain a certain degree of risk with respect to accuracy.

As noted previously, it would have been valuable to summarize current DOJ efforts in applying Live Scan technology as a much more efficient means of receiving and processing registration data and preventing duplicate records. Live Scan technology will eliminate such uncertainty and eliminate the possibility of duplicate entries. As discussed with the audit team, DOJ expects that by the Spring of 2004, law enforcement agencies statewide will begin using their Live Scan terminals to transmit fingerprints, registration information, and photographs to DOJ. Through an interface with the VCIN/Megan's Law database, registration data will be processed with little or no manual intervention, and submitted fingerprints will be automatically compared with those contained in the Criminal History System to confirm each offender's identity.

5. Local Agency Training.

BSA's Recommendation: "To ensure that local law enforcement and its own staff update sex offender information appropriately, Justice should design and implement an appropriate training program."

DOJ's Response: The report acknowledges that recent budget cuts have forced DOJ to eliminate four of its six Field Representatives who traveled throughout the state training local agencies. However, it does not suggest how DOJ's resources could be reallocated to provide the suggested training, which is important in light of past and potentially future budgetary and position reductions impacting state agencies.

The report is inaccurate in its statement, "...Justice currently provides training on sex offender registration only in the form of answering questions as they arise from local personnel who call the Sex Offender Tracking Program (SOTP)." In fact, the two remaining Field Representatives continue to provide training on data entry procedures. Since January 2003, they have conducted 10 one-day training sessions attended by 254 individuals from 46 local law enforcement agencies.

The report also does not mention that DOJ's legal and program staff have for years trained prosecutors and law enforcement personnel on sex registration laws. Presentations have also been sponsored by Peace Officers Standards Training, California District Attorneys Association, California Sexual Assault Investigators Association, California College and University Police Chiefs Association, regional Sexual Predator Apprehension Teams, various major police and sheriff's departments and district attorneys' offices. This instruction has been reinforced by other technical information provided to local agencies through various DOJ Information Bulletins, the comprehensive VCIN/CLETS Users Guide, and daily telephone contacts between registering agencies and program staff.

6. Date of Registration on VCIN/Megan's Law Database.

BSA's Recommendation: "To improve the value of the sex offender information that is available to the public and may be outdated, Justice should modify the VCIN/Megan's Law database to include the date that the registration information was last updated."

DOJ's Response: The report recommends that the VCIN/Megan's Law database include the date that the registration information was last updated. While DOJ concurs that additional information allowing the public to better assess each offender's risk potential would be valuable, the Department believes that the use of the date that the registration information was last updated may be easily misunderstood by the public, especially in light of the complex nature of registration laws. For instance, certain types of offenders (transients, sexually violent predators) must register more frequently, as well as on an annual basis. The required time period for registration is also affected when an offender is reported as deported, out-of-state, or incarcerated. In many cases, this date may be misinterpreted by the public to imply that an offender is in compliance with his or her registration requirements and that the listed area of residence (zip code, county) is accurate. More importantly, an old date may lead the public to assume that an offender has long departed their community when the offender may actually still reside in the general area, giving residents a false sense of security.

As a more meaningful alternative, DOJ continues to recommend adding a more understandable indicator to the VCIN/Megan's Law database to reflect whether the offender is in compliance with his or her registration requirements or in violation. The fact that an offender is in violation could quickly and easily be determined by the public. Such

information may be useful in allowing the public to better assess their potential risk of becoming a victim. DOJ is currently assessing the technical requirements to implement this improvement.

7. Disclaimer on the VCIN/Megan's Law Database.

BSA's Recommendation: "To ensure the VCIN/Megan's Law information is presented to the public in a manner that represents its true nature and purpose, Justice should finalize its disclaimer information and direct law enforcement agencies to provide the disclaimers to the public members who view the VCIN/Megan's Law database." The disclaimer information should include certain statements as listed in the draft report.

DOJ's Response: The report recommends that a more comprehensive disclaimer be included on the VCIN/Megan's Law database so that the public is more aware of the possible limitations of the data. (Such limitations are primarily related to the accuracy of the zip code and county of residence. The accuracy of other information, such as the photo, descriptors, and convicted offenses, is generally not affected by an offender's failure to register). While there is currently a disclaimer indicating that the offender may have relocated, DOJ agrees that a more extensive disclaimer may be valuable. Therefore, a replacement disclaimer has been drafted by DOJ legal counsel and reviewed by audit staff. This disclaimer, which must be translated in 12 other languages, will be incorporated into the VCIN/Megan's Law database in the near future.

CHAPTER 2

8. Deceased and Deported Sex Offenders.

BSA's Recommendation: "To ensure that it updates records of sex offenders who are deported, Justice should continue to work with the INS to obtain this information and update sex offender records."

BSA's Recommendation: "To ensure that it updates records of sex offenders who are deceased and deported, Justice should continue to work with Health Services, the Department of Homeland Security/Bureau of Citizenship and Immigration Services, and other public agencies to obtain this information and update sex offender records."

DOJ's Response: DOJ will certainly continue to take advantage of various information sources to reflect the current status of sex offenders in the VCIN/Megan's Law database. Arrangements have been finalized to conduct additional searches for death certificates through both the U.S. Social Security Administration and the California Department of Health Services (DHS) and for deportee records through the Bureau of Citizenship and Immigration. DOJ will also continue to run sex offender indexes through an Internet-based public information search company. The initial run proved extremely productive as it identified recent address information on nearly 5,000 non-registering sex offenders. DOJ

was able to verify the out-of-state status on over 2,800 of these offenders and update the database accordingly. Local law enforcement agencies, as well as DOJ's Sexual Predator Apprehension Teams, are finding these addresses to be very valuable as they continue to track down these sex offenders.

It should also be noted that in a collaborative effort with the DHS, DOJ will soon offer a more efficient and cost-free method for local law enforcement agencies to verify the death of a sex offender. Normally, before an agency can report the death of an offender, it is required to purchase a copy of the death certificate from the DHS as verification. So that agencies can avoid this process, DOJ will relay the results of death certificate searches from the DHS to requesting agencies. This will also help improve accuracy of the VCIN/ Megan's Lawe database by allowing us to verify the deceased status of an offender.

9. Continual review of VCIN/Megan's Law database

BSA's Recommendation: "To ensure it fully satisfies the intent of the Legislature that it continually reviews the Megan's law information for accuracy, Justice should design and implement a program to regularly check the data as a whole for inconsistencies and periodically reconcile the data with other reliable information."

DOJ's Response: DOJ has instituted a wide variety of procedures to work with custodial agencies. It has established the Megan's Law Assessment Unit to address category designations assigned to sex offenders and has established procedures with CYA to obtain juvenile offender disposition. It is also initiating subsequent arrest notification procedures on sex offenders and proceeding with the development of Live Scan entry capability to eliminate duplicate records and ensure positive identity confirmation. DOJ continues to work with the DHS, Bureau of Citizenship and Immigration Services, Social Security, and public databases to obtain important deceased, deported, and out-of-state offender information. While DOJ intends to continue to refine its efforts in these areas, it is also important that some basic understanding exist regarding legislative intent and the inherent responsibility placed upon submitting agencies to ensure that information they supply the VCIN/Megan's Law database is timely, complete and accurate. Only the submitting agency can ensure the accuracy of the data that it submits. It is equally important that local agencies monitor the whereabouts of sex offenders in their jurisdictions and follow up on the electronic violation notifications sent to their agencies. DOJ will continue to maintain an aggressive posture to provide for system improvements as time, technology and resources permit to help agencies meet their statutory responsibilities.

OTHER COMMENTS

- The report states that the VCIN/Megan's Law database "...contained 98,678 records of convicted sex offenders residing in California as of July 2003 and is accessible to the public..." Actually, the number of sex offender records that were available for "public viewing" in the Megan's Law database as of July 3, 2003, totaled 80,746. This includes 78,926 "serious" and 1,820 "high-risk" offenders. An additional 17,932 "other" sex offenders are part of the VCIN/ Megan's Law database but are not viewable by the public. Also, the offenders in the database do not necessarily still reside in California, as many have been reported as out-of-state or deported.

- The report also states that sex offenders have a duty to register at law enforcement agencies with jurisdiction over places where the sex offender "resides, works, or frequents". Generally, offenders are required to register only in the jurisdiction where they reside. The additional requirement to register in the jurisdiction where they work applies only to those offenders who live out-of-state or work on a college campus. There is no specific requirement that offenders register where they frequent.

- The report attributes certain policy statements to specific DOJ managers rather than to the Department of Justice. According to audit staff, this was done due to an uncertainty that such statements reflected the position of the Department. While always implied to be the case by DOJ management, some written confirmation to this effect was requested. We have revised the statements and you can be assured that the comments of these senior DOJ managers reflect the official position of the Department and should be considered as equal to all other information attributed to the Department of Justice.

- The report references activities by local agencies regarding public disclosures of sex offenders. While specific 2002 figures were not available during the preparation of the draft report, DOJ has now concluded collection of this information. Specific 2002 figures are as follows: 76 law enforcement agencies made public disclosures on 424 sex offenders, distributing 10,841 fliers. These figures are based on survey responses from 331 law enforcement agencies. The information will also be included in its forthcoming annual Megan's Law Report to the Legislature, which is expected to be released soon.

- The report mentions that improvements in the accuracy of VCIN/Megan's Law data have been limited by insufficient DOJ resources. While such statements have disputable implications as to DOJ's mandated role in this regard, DOJ fully recognizes its responsibility in the proper collection, maintenance, and dissemination of sex offender data. To this end, DOJ has been diligent in its efforts to secure funding for sufficient resources as needed to meet workload, determine offenders' risk categories (as specified in Megan's Law), and enhance the VCIN/ Megan's Law database to meet the ever-increasing legislative demands for greater tracking

capability. This includes DOJ's plan for the possible submission of a BCP to renovate the VCIN/Megan's Law database, an important step in making the necessary improvements in the sex offender tracking capabilities.

It is also important to recognize that, like virtually every other state agency, DOJ has been adversely affected by the State's fiscal crisis. Still, with the exception of its field training component, the SOTP has been protected from position cuts and other reductions in its functions and services. DOJ has taken all reasonable steps to minimize delays in filling vacancies stemming from the current freeze exemption process and has redirected considerable resources to keep current with its normal registration workload. More than $200,000 in overtime funds were expended for this purpose during the last two fiscal years.

CONCLUSION

We believe that this joint analytical review has been a healthy experience. While differences of opinion may exist on some points, by and large, no significant flaws have surfaced with respect to the Department's management of the SOTP and its oversight of the VCIN/Megan's Law database. While it is our mutual goal to provide law enforcement and the general public with complete, updated, and accurate data on the status of sex offenders in California, the achievement of this goal is a joint responsibility shared by DOJ and contributing agencies, and dependent in large part on compliance by those individuals required to register as sex offenders.

As expressed in our comments, DOJ views its primary responsibility as one of oversight of the VCIN/Megan's Law database. This database serves as the repository for sex offender information submitted to us by hundreds of law enforcement and custodial agencies. Every effort has been made to provide a system designed to meet the expanding demands placed upon it by the Legislature, to facilitate the submission and retrieval of such information, and respond to the public's need for access to such information. Inherent to this challenge is an on-going effort to assist agencies in the transmission of correct and accurate information. We believe that this letter illustrates the wide variety of services and system improvements in which DOJ is actively engaged to achieve this goal. While not wavering in our belief that only submitting agencies can truly ensure the accuracy of the data it submits and must take individual responsibility in doing so, DOJ continually works with submitting agencies to help minimize the submission of erroneous data, initiates independent efforts to work with outside agencies to determine the possible out-of-state, deceased, or deported status of sex offenders in the database, and undertakes system improvements to provide the general public with the most recent registration information possible. The recent establishment of the Megan's Law Assessment Unit is an important augmentation to our limited resources to ensure proper category designation of sex offenders. Major efforts underway to implement Live Scan submission of sex registration information, the automated receipt of subsequent arrest information, and hopeful approval of our proposed VCIN Renovation BCP, will have significant ramifications toward maintaining accurate and current information. While we might argue with the context and analysis presented with respect to the report's specific recommendations, we generally are in agreement with the underlying intent of your suggestions to achieve as complete and accurate information as possible. To this end, we have and are continuing

to pursue remedies consistent with your recommendations (e.g., disclaimers, working with CDC and CYA, Live Scan, category assessment, facilitate data entry, compliance/violation indicator, deceased/deported/out-of-state confirmation).

This is not to say that other improvements cannot be made. As time, technology, and resources permit, we will continue to maintain an aggressive effort to provide for improvements that will help submitting agencies meet their responsibilities and help contribute to public safety.

Thank you for this opportunity to comment on BSA report. If you or your staff have any questions about this audit response, please contact Georgia Fong, Director, Office of Program Review and Audits, at (916) 324-8010. Program questions may be directed to Nick Dedier, Director, California Justice Information Services, at (916) 227-3043.

Sincerely,

(Signed by: Steve Coony)

STEVE COONY
Chief Deputy Attorney General
Administration and Policy

Enclosure

COMMENTS

California State Auditor's Comments on the Response From the Department of Justice

To provide clarity and perspective, we are commenting on the Department of Justice's (Justice) response to our audit report. The number corresponds to the number we place in Justice's response.

- Throughout the report we recognize many of Justice's efforts to improve the sex offender data. In fact, Chapter 2 is devoted to its recent efforts and Appendix D lists the many changes it has made to the Violent Crime Information Network (VCIN).

- We do not assert that Justice is inherently responsible for or obligated to ensure the accuracy of information other agencies submit. Further, we agree that the intent language is not binding, as noted on page 38. However, as the report title indicates, with increased efforts, law enforcement and correctional agencies, including Justice, can improve the accuracy and completeness of the information in the Megan's Law database. We continue to believe that Justice should do more to improve the accuracy of this information because it is intended for the public's use. As a state agency, and the central repository for sex offender data, Justice should take the lead by analyzing the database as a whole, identifying errors and inconsistencies, and if appropriate, notifying the responsible agencies and working with them to correct the data.

- We do not place the entire blame for the inaccuracy of the Megan's Law database on Justice. Our report recognizes that many agencies are involved in registering sex offenders, all of whom contribute to the sex offender information in the VCIN and the Megan's Law database. However, as we planned our audit, we decided to review Justice's processes for entering and managing the sex offender information because it is the central repository agency. For that same reason, we believe it is most appropriate to make our recommendations to Justice. As the central repository, Justice should be responsible for training other agencies on sex offender registration, including data entry, coordinating with other state and federal agencies to obtain information on deaths and deportations, and directing agencies

on when and how to update sex offender records in the VCIN, as it did in July 2002 when it instructed agencies not to directly update the VCIN for sex offenders in their custody.

- Contrary to Justice's assertion, we do not place the burden of inefficiencies and compliance failures totally on Justice. For example, in the heading on page 19, and in the text on pages 3, 20, 21, 22, 25, and 33, we state that other state and local agencies are responsible for not providing Justice all of the information it needs to update records in the VCIN. Additionally, in our Audit Highlights on page 1 and on pages 2, 11, 18, 30, and 31, we reiterate that many sex offenders continually relocate and fail to register as required, causing many records to contain outdated registration information. Nevertheless, Justice is responsible for some of the errors we found, such as improperly classifying juvenile sex offenders and creating duplicate records.

- We reviewed the information in the VCIN and the Megan's Law database, which is updated by numerous state and local agencies, and selected our samples as describe in the report. When we discovered a problem, we did additional work to identify the sources of the errors, including local law enforcement and various state entities.

- In Chapter 2 we discuss many of the projects Justice currently has underway that affect the accuracy of the sex offender data, such as the information it is obtaining from the INS, the Social Security Administration, the departments of Health Services and Corrections (Corrections), and the work the assessment unit is doing. We do not discuss projects that Justice plans to implement in the future, such as the subsequent arrest project, the Live Scan project, and the Megan's Law Database Renovation because it is too early to assess their impact on the Megan's Law database.

- We have added wording on page 24 to clarify that it is the data in the system that is unreliable, not the system itself.

- While placing the flags on sex offenders' Department of Motor Vehicles' records may provide valuable information for law enforcement, it is our understanding that it does not update the address information shown to the public in the Megan's Law database.

- We reviewed the current laws regarding sex offender registration and dissemination of information. Our legal counsel also conferred with Justice's legal counsel to identify deficiencies in the current Megan's Law that hinders the accuracy of the data. We determined that nothing in the current laws hinders the accuracy of the information in the Megan's Law database. Although we were not asked to do so, we identified and provided a list of pending legislation in Appendix C for information purposes.

- We acknowledge on pages 2, 11, 18, 30, and 31 that many problems arise because sex offenders do not register as required.

- As we explained in our meetings with Justice, until we issue our final report, wording in our recommendations and other areas in a report are subject to change through our quality control and edit processes. As a result, in many cases, the reader may not be able to locate in our report the text appearing in quotations in Justice's response. It is our custom to include all recommendations in the body of the report and summarize and include in the Summary key recommendations that relate to issues we discuss in that section. Because we may combine some issues or exclude specific details when preparing that summary, some recommendations that appear at the end of a chapter may not appear in the Summary.

- On pages 18 and 21 we acknowledge Justice's assertion that until recently it did not have the staffing resources necessary to perform this work.

- Justice misrepresents our position. We do not recommend that Justice modify the criteria it currently uses to match records between the VCIN and Corrections' list of inmates. Rather, our recommendation states that Justice should "regularly compare its records showing the incarcerated status with information provided by Corrections to determine which sex offenders are confined and those who are no longer in confinement, continue to work with Corrections to improve this process, and produce exception reports to resolve those records in question. Justice can then update these records appropriately."

- We modified the text on page 29.

- Again, Justice misrepresents our position. We do not recommend that Corrections' data be used to remove an incarcerated status. Instead, as we discussed in our report and during our audit exit

conference with Justice, we believe that Justice should use Corrections' database as a resource to identify records that require further research.

- Justice mischaracterizes our report. We state on page 29 that both the VCIN and Corrections' listing of inmates contain errors that prevent the proper updating of some sex offender records in the VCIN. Also, because we were not asked to review the efficiency and cost-savings, we cannot comment on them.

- Again, Justice mischaracterizes our report by overstating the blame we place on it for duplicate records. We recognize that local agencies are responsible for the information they enter into the VCIN and provide an example of a specific police department that created numerous duplicate records. However, because Justice is the central repository agency, it is in the best position to review the database as a whole, identify the agencies responsible for creating duplicate records, and instruct them on how to properly update records in the VCIN.

- We have added text on page 26 to include this information.

- In the July 7, 2003 letter[1] that Justice refers to on page 6 of its response and page 64 of this report, Justice agreed that our statement was essentially correct and says it responds "to local agency technical training requests as time and funds permit." Furthermore, during our discussions on this topic, Justice neither mentioned the 10 one-day training sessions it conducted in 2003 nor provided us information about them.

- We disagree with Justice on this and believe that by not having the date of the last registration the public cannot distinguish between a sex offender who has not complied with his or her registration requirement for one month and another sex offender who has not registered in the last five years. Knowing that one sex offender appeared in person recently to register at a local police or sheriff's department and another has not registered for years, the public can better assess the reliability of the offenders' registered location.

- Although we agree that knowing whether or not a sex offender is in compliance with his or her registration requirements is important, we believe that also knowing when the offender last registered is more helpful in evaluating the usefulness and reliability of the information presented in the Megan's Law database.

[1] This letter is available for review at the Bureau of State Audits.

- Although we correctly reported this information in the Introduction, in the draft sent to Justice for comment we inadvertently cited the wrong figure in the Summary. We corrected the information.

- We have clarified our wording on pages 7 and 8.

- In those instances for which we have documentation that the positions taken are those of Justice, we have changed our text to attribute the assertions to Justice.

Blank page inserted for reproduction purposes only.

Agency's comments provided as text only.

Youth and Adult Correctional Agency
1100 11th Street, Suite 400
Sacramento, CA 95814

August 1, 2003

Elaine M. Howle, State Auditor*
Bureau of State Audits
555 Capitol Mall, Suite 300
Sacramento, California 95814

Dear Ms. Howle:

The Youth and Adult Correctional Agency (YACA) has reviewed your letter dated July 28, 2003, and draft audit report entitled "California Law Enforcement and Correctional Agencies: Could Do More to Ensure That Public Information About Registered Sex Offenders Is Reasonably Accurate and Complete." We appreciate the opportunity to respond to the draft report. Enclosed are the California Department of Corrections' and the California Youth Authority's responses to the review findings and recommendations.

As indicated in the enclosed responses, YACA continues to work closely with the Department of Justice to ensure that the sex offender registry is accurate and up-to-date. If you have any questions concerning the responses, please contact Peter Jensen, Undersecretary, at 323-6001.

Sincerely,

(Signed by: Robert Presley)

ROBERT PRESLEY
Secretary

Enclosures

* California State Auditor's comments appear on page 87.

Department of the Youth Authority
4241 Williamsbourgh Drive
Sacramento, California 95823

July 31, 2003

Elaine Howle, State Auditor
Bureau of State Audits
555 Capitol Mall, Suite 300
Sacramento, CA 95814

Dear Ms. Howle:

Thank you for the opportunity to respond to the draft report "California Law Enforcement and Correctional Agencies: Could do More to Ensure That Public Information About Registered Sex Offenders is Reasonably Accurate and Complete." We appreciate the thoroughness of the review your office conducted and generally agree with those portions of the report dealing with the Department of the Youth Authority (YA). The report verifies that the YA views sex offender registration as an important link in the chain of public safety. Our goal is to make the YA link in this chain as strong as possible.

Your report notes that juvenile sex offenders tried in adult court were omitted from the Megan's Law database on 51 occasions. As your report correctly notes, YA files reflect that documentation on 20 of these offenders was sent from YA to the Department of Justice (DOJ). Of the remaining 31 cases, 23 involved transfers from the YA to the California Department of Corrections (CDC); 7 involved recent arrivals in the YA where the registration was in process but not completed; and one involved an offender who was never transferred from CDC to the YA.

The YA will be working cooperatively with the Department of Justice to implement the recommendations outlined in your report. Your report is certainly valuable in improving an important aspect of public safety.

Sincerely,

(Signed by: Jerry L. Harper)

Jerry L. Harper
Director

Department of Corrections

Memorandum

Date: July 31, 2003

To: Robert Presley, Agency Secretary
Youth and Adult Correctional Agency
1100 11th Street, Suite 400
Sacramento, CA 95814

Subject: **RESPONSE TO AUDIT REQUESTED BY THE JOINT LEGISLATIVE AUDIT COMMITTEE ON THE MEGAN'S LAW DATABASE**

Attached is the response from the California Department of Corrections (CDC) relative to the findings from the Bureau of State Audits on the Department of Justice (DOJ) Megan's Law Database.

The most challenging issue for our Department and DOJ is that our Offender Based Information System is written in antiquated programming language, was designed over 25 years ago and doesn't capture the data needs for today's demands to more effectively manage this process.

Staff from CDC and DOJ have been meeting and will continue to meet to develop better communication and information sharing and manage this within the constraints we have.

If you have any questions regarding the attached response, please contact me at 445-7688.

(Signed by: Edward S. Alameida, Jr.)

EDWARD S. ALAMEIDA, JR.
Director
Department of Corrections

Attachment

RESPONSE TO BUREAU OF STATE AUDITS REPORT
"CALIFORNIA LAW ENFORCEMENT AND CORRECTIONAL AGENCIES
Could Do More to Ensure That Public Information About Registered Sex Offenders Is Reasonably Accurate and Complete"

This comprehensive report states, "The Megan's Law Database contains some inaccurate and incomplete information about convicted sex offenders."

The California Department of Corrections (CDC) provides a significant amount of information on convicted sex offenders to the Department of Justice (DOJ) for inclusion in the Megan's Law Database (VCIN):

- Preregistration: At the time of initial delivery to a mainline institution for those sex offenders who have not been required to register in the past, fingerprints, physical descriptors, photograph, and the inmate's signature are provided to DOJ.

- Notice of Duty to Register: The DOJ Form SS8047, Notice of Sex Offender Registration Requirement-PC 290, is prepared providing information on conviction, release date, and residence at time of release. It also includes a current photo and inmate's signature and is forwarded to DOJ prior to any sex offender's release from confinement.

- Monthly Data Extract from the Offender Based Information System (OBIS) for the DOJ to incorporate return to custody information (incarcerated) into their database for offenders current address.

The Bureau of State Audits report quotes the following:

- **"We found 1,142 records that indicate the offenders released although the Department of Corrections (Corrections) reports them as incarcerated." Pages 4, 30, 33 and 34**

DOJ has been utilizing other systems to compare data with the official extract provided them from CDC's OBIS. Those other systems, which are maintained by our Parole Division, indicate that an offender is on parole when in fact that same offender is in our custody as a parole violator pending revocation proceedings. (Offenders pending revocation whether or not in one of our institutions are considered to be active on parole.) During a meeting with DOJ staff, it was agreed that OBIS is the most accurate information and no comparison should be made with the parole system.

- **"As of May 2003, Corrections reported that of the 2,575 offenders, it had discharged 921, and paroled 866." Pages 7, 45 and 52**

The research completed on the list provided to CDC revealed that the agency number on the DOJ Form SS8047 that is entered into their database is not updated when a new DOJ Form SS8047 is received. CDC utilizes the offender's assigned number for the agency number field of the DOJ Form SS8047. Because this field is never updated by DOJ, any future activity will always appear to be the responsibility of CDC. Some entries contained CDC numbers that had been discharged,

however, the date signed on the DOJ Form SS8047 was much later than our discharge date. When a new form is received and the agency number is not updated, it appears to be a notification from CDC when in fact it could be from any other agency such as a county jail, etc.

Of the 2,575, offenders on this list, 581 could not be identified as a CDC inmate/parolee/discharged offender.

Some of the offenders are deceased or in custody in another jurisdiction.

We have recommended to DOJ staff that the agency number be updated whenever a new DOJ Form SS8047 is received. This will allow DOJ staff to assess where there may be problems with reporting information.

"Also, many others were turned over to the U.S. Immigration and Naturalization Service (INS) and probably deported. According to Corrections although it reports when a sex offender is released, it does not inform Justice of those who were turned over to the INS upon release." Page 8

The CDC's current process is to report the residence where the inmate is expecting to reside once released on parole. This information is obtained from the inmate several months prior to release and entered on the DOJ Form SS8047 at that time. It is essential for CDC to record the planned residence, as an INS hold does not necessarily mean deportation. It is not uncommon for holds to be dropped by agencies prior to release; and, often times, holds are not placed by INS or other agencies until just prior to an inmate's release (subsequent to the preparation and distribution of the DOJ Form SS8047).

As a result of our meetings with DOJ staff, we are working on procedures to notify DOJ when a Penal Code Section 290 registrant is released to an INS hold.

"To ensure it identifies and updates records of sex offenders confined in prisons, Justice should continue to work with Corrections to improve this process and produce exception reports to resolve those records in question." Pages 9 and 41

The CDC is currently notifying DOJ when persons are incarcerated in one of our facilities via the monthly extract from OBIS. Prior to release, a notification of prerelease status is sent via the DOJ Form SS8047. The next extract received from CDC's OBIS, where a particular offender is no longer included, may be the suggested "exception reporting" process; however, DOJ has indicated that their system is not designed to capture this type of reporting.

This has been a topic of discussion at recent meetings with DOJ and we will continue to work toward a viable solution.

"We found that for 582 records in the VCIN that indicate the offenders are in prison, there were no matching records on Corrections' list. We further compared the names and dates of birth in Corrections' data to those in the VCIN for a sample of 59 of the 582 records where the CII numbers did not match." Page 26

According to the findings in this report, there were 48 cases that did not have matching Criminal Identification Information (CII) numbers. Further research by the Bureau State Audits indicates that most of these offenders were either incarcerated in another jurisdiction, discharged from our jurisdiction or deceased. Six are actually on parole with CDC, three of which are absconders from parole supervision.

- **"Specifically, of the 161,689 records in Corrections' March 2003 list of inmates, we found that almost 800 records either had no CII number or one that is invalid or duplicated." Page 35**

When an inmate is initially delivered to CDC, identifying information is obtained from the court documents that accompany the inmate. CDC staff obtains the CII number from those documents. Often times, this information is not available upon initial receipt. Once the fingerprint documents are transmitted to DOJ, that agency transmits a CII report to CDC and the CII number is entered into our database at that time. It is very possible that 800 records could be in the processing stage at our reception center and therefore awaiting this information.

Duplicate CII numbers may result when an inmate is discharged from a prior number and returned to prison on a new commitment and a new CDC number, DOJ's system may be showing this offender twice.

This has not been an agenda item in past meetings with DOJ, however, we will present this issue at the next meeting and seek resolution.

- **"Corrections believes that one reason for the erroneous status of these sex offender records is Justice's policy regarding how the notification form should be completed." Page 53**

Information gathered at recent meetings held with DOJ and CDC staff, revealed that DOJ does not utilize the release date information on the DOJ Form SS047; rather, they use the date the inmate signed the form. In some cases, the date of signature can be several months prior to release. When the monthly extract of offenders in CDC custody is subsequently received by DOJ, the prerelease status resulting from the DOJ Form SS8047 is removed and the status is changed to incarcerated. This method will continue to generate numerous discrepancies between the two departments' records. The only method for the DOJ system to capture that an offender is released from custody is when the offender actually registers with law enforcement. If the offender fails to register, the case will remain in prerelease status in DOJ's system.

Our departments will continue working together to improve communication and processes to enhance the DOJ system so that it is a reliable tool for the communities and law enforcement.

COMMENTS

California State Auditor's Comments on the Response From the Department of Corrections

To provide clarity and perspective, we are commenting on the Department of Corrections' (Corrections) response to our audit report. The number corresponds to the number we placed in Corrections' response.

- Until we issue our final report, wording in a report is subject to change through our quality control and edit processes. As a result, in some cases, the reader may not be able to locate in our report the exact text appearing in quotations in Corrections' response, or on the pages cited.

- Although 375 of the 800 records may be in the processing stage at the reception center, it does not appear to be the case for the remaining records.

cc: Members of the Legislature
Office of the Lieutenant Governor
Milton Marks Commission on California State Government Organization and Economy
Department of Finance
Attorney General
State Controller
State Treasurer
Legislative Analyst
Senate Office of Research
California Research Bureau
Capitol Press

California State Auditor

BUREAU OF STATE AUDITS

California Law Enforcement and Correctional Agencies

Megan's Law Database

Presentation by

California State Auditor

Joint Legislative Audit Committee
Informational Hearing

September 23, 2003

This presentation document is only intended to outline selected portions of Report 2003–105, *California Law Enforcement and Correctional Agencies: With Increased Efforts, They Could Improve the Accuracy and Completeness of Public Information on Sex Offenders* (August 2003). For a more complete explanation of the points outlined in this document, refer to the report.

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AUDIT HIGHLIGHTS

- The Megan's Law database contains thousands of errors, inconsistencies, and outdated information. As of July 3, 2003, the database contained 80,746 records of convicted sex offenders registered in California.

- Because it excludes records of some serious sex offenders and erroneously lists others as incarcerated, the Megan's Law database does not inform the public about these offenders.

- Conversely, because it includes hundreds of duplicate records and erroneously indicates that 1,142 incarcerated sex offenders are free, it may unnecessarily alarm the public.

- Address information for roughly 23,000 records in the Megan's Law database has not been updated for at least a year largely because sex offenders have not registered.

- The accuracy of the information in the database depends on sex offenders providing their correct addresses and other information when they register. In addition, officials at confinement facilities (custodians) are responsible for pre-registering first-time sex offenders who come into their systems. Custodians include probation officers; officials at local jails, schools and road camps; state prisons, youth facilities, and hospitals; and any other institutions where offenders are confined.

- Although the Department of Justice (Justice) maintains that its primary responsibility is to compile the data it receives from local law enforcement agencies and confinement facilities, it has taken steps to improve the accuracy of the information in the Megan's Law database.

The Megan's Law Database Contains Some Inaccurate and Incomplete Information About Convicted Sex Offenders

The Megan's Law Database Omits Some Records of Juvenile Sex Offenders Tried in Adult Courts

We found 51 records of juvenile sex offenders whose crimes were serious enough to warrant trial in adult court (and therefore subject to public disclosure) that were not included in the Megan's Law database.

For 20 cases, Justice's staff incorrectly entered the records into the Violent Crime Information Network (VCIN).

After we alerted Justice about this issue, it developed procedures for staff to identify and properly enter juvenile sex offender records into the VCIN.

For the remaining 31 cases, the Departments of the Youth Authority (Youth Authority) and Corrections (Corrections) did not prepare pre-registration and/or notification forms or Justice did not receive or process them.

The Megan's Law Database Also Omits Some Records With Inaccurate Offense Codes

During the audit, Justice identified 1,900 records in the VCIN that are not shown to the public because they have offense code 290 rather than the more specific offense codes for which the sex offenders were convicted.

Justice and local law enforcement agencies enter a 290 offense code into the VCIN when they are unsure about the actual offense code or an offender's case is under review.

For example, Justice may enter a 290 offense code if an offender was convicted in another state or if the conviction information is not provided on the pre-registration form. Justice ultimately determines the proper offense code; however, it can be time-consuming and Justice asserted that until recently it did not have the staffing resources to do the work.

We sampled 12 records with the 290 offense code and determined for 10 that were ultimately upgraded from "other" to "serious" it took an average of 13 months before the records were correctly classified.

Some Sex Offender Records Continue to Indicate the Incarcerated Status After Offenders Are Discharged From Prison or Paroled

For 582 records in the VCIN that indicate the offenders are in prison, there were no matching Criminal Information and Identification numbers on Corrections' list of inmates. A sample of 59 of these revealed that 48 of the offenders were no longer in prison.

The status of the 48 individuals were:

- Seventeen were transferred to custody of the U.S. Immigration and Naturalization Service (INS).
- Twelve were discharged from Corrections.
- Seven are deceased.
- Six were released on parole, three of whom were at large.
- Three were in custody of another law enforcement agency.
- One was released from another law enforcement agency.
- One was out-of-state.
- One should not have been shown as incarcerated and Justice subsequently corrected this record.

Justice's system automatically notifies local law enforcement agencies of offenders who are possibly in violation of their registration requirements but it does not trigger registration violations for offenders who are shown as incarcerated. Therefore, for records that erroneously indicate that the sex offenders are incarcerated, law enforcement agencies are not automatically notified of sex offenders in their jurisdictions who may not be in compliance with their registration requirements.

Local Custodians Are Not Required to Track or Report All Sex Offenders Confined At Their Facilities

Before releasing a sex offender confined for committing a registrable offense, an official at the confinement facility or from the court is required by law to notify the offender of his or her duty to register. In addition, after the offender signs the notification form, the custodian must forward it to Justice and local law enforcement before releasing the individual.

However, courts and local custodians are not required to follow this process when sex offenders are confined for reasons other than registrable sex offenses. Further, the law does not require

local custodians to determine whether individuals are registered sex offenders or to inform Justice when they take offenders into custody.

Before July 2002, Justice granted many custodians access rights to VCIN so they could update records to indicate that sex offenders they took into custody were incarcerated. However, because this process created a large volume of temporary address changes and because local custodians did not consistently update the records, Justice revoked custodians' access rights.

Since revoking the access rights, Justice has not enlisted the help of responsible custodians to correct the older records, leaving many records incorrectly showing that offenders are being held by local custodians.

> We found 446 sex offenders whose records indicated that local custodians had incarcerated them for more than a year; but because most jail terms are limited to one year, we believe, and Justice agrees, that most of these records in the Megan's Law database do not accurately reflect the offenders' status.

The Megan's Law Database Includes Hundreds of Duplicate Records

We identified 437 records in the Megan's Law database that were obvious duplicates of other records. Consequently, the public cannot rely on the sex offender information shown in a zip code search to identify the number of sex offenders in a specific community.

Although Justice identifies and corrects records with duplicate Criminal Identification and Information numbers each week, it does not identify and eliminate other obvious duplicates.

Lacking Adequate Training, Some Personnel Who Update Sex Offender Records Create Duplicate Records

Justice has not provided sufficient training to its personnel and to all local law enforcement agencies that update sex offender records. Furthermore, neither the agencies nor Justice have reviewed and corrected duplicated records.

According to Justice, before fiscal year 2002–03, it had a team of six field representatives who provided technical training for local law enforcement agencies on entering data into VCIN and other Justice databases. However, Justice could not provide information about when and how the training was conducted.

Staffing problems within local law enforcement agencies further limit the adequacy of VCIN training. Because of high turnover among local staff those currently responsible may not be fully trained. In addition, because of the State's recent budget reductions and the hiring freeze, Justice eliminated two of the field representative positions in fiscal year 2002–03 and another two in fiscal year 2003–04.

Some Records Show Incarcerated Sex Offenders as Residing in Local Neighborhoods

In July 2002, Justice implemented a software program using Corrections' list of inmates to compare against VCIN and update records to show the incarcerated status for incarcerated sex offenders. However, because of errors and inconsistencies in Justice's and Corrections' data, this new process does not update all sex offenders' records in the VCIN.

> We found 1,142 records in the Megan's Law database that did not show the incarcerated status even though Corrections' list of inmates indicated that these offenders were in prison.

Justice is working with Corrections to improve its process for updating records of incarcerated sex offenders, including possibly developing exception reports to identify records that are not properly updated.

The Megan's Law Database Does Not Show When Sex Offenders' Records Were Updated, Limiting the Information's Usefulness to the Public

Because the Megan's Law database does not include the dates of offenders' registrations, the public has no way of distinguishing the records recently updated from those updated long ago, thereby limiting the usefulness of the information.

> We found that approximately 23,000 records were last updated before April 2002, and about 14,000 of those were last updated before April 1998—five years before our review.
>
> Often, registrants do not comply with annual registration requirements, and many offenders with outdated information are not required to register in California because they may have moved outside the State, been deported or incarcerated, or are deceased.

If the dates the offenders last registered were shown, not only would the public be able to recognize the most current records, it would also better understand the usefulness and reliability of all registrant information.

The Public Would Be Well Served by Justice Attaching Disclaimers to the Megan's Law Database

Modifying the existing disclaimers and adding others about potential inaccuracies and errors could help the public better understand and use the data to protect themselves and their families.

The following disclaimers about the Megan's Law database could assist people who view it:

- A statement that Justice compiles, but does not independently confirm the accuracy of the information gathered from various sources.

- A statement that the information is intended not to indicate the offenders' risk to the public but to help people form their own risk assessments.

- A statement that the location information is based on the "last reported location," which may have changed.

- A statement to remind viewers that a fingerprint comparison is necessary to positively identify a sex offender.

At the time we issued our report Justice was in the process of finalizing additional disclaimers that incorporate our suggestions and plans to make them available for those who view its Megan's Law database.

Justice Has Inappropriately Disclosed the Records of Some Juvenile Sex Offenders

Justice erroneously disclosed to the public 42 records for sex offenders convicted in juvenile courts.

The errors occurred because not all personnel in its Sex Offender Tracking Program are sufficiently trained to evaluate the conviction information they receive to identify cases decided in juvenile courts rather than in adult courts.

Also, Justice may not receive adequate information from courts to determine whether the conviction was in adult or juvenile court.

Recently, one of Justice's deputy attorney generals met with Youth Authority's legal counsel and agreed on a proposed solution to identifying and validating whether a juvenile sex offender was adjudicated in a juvenile court or convicted in adult court.

Although It Has Begun a Process to Improve the Information In the Megan's Law Database, the Department of Justice Still Does Not Adequately Review Sex Offender Data

Ensuring the Accuracy of the Data Is Not One of Justice's Primary Responsibilities

According to Justice, because it is only a repository, not the originating source, of the Megan's Law information, it is beyond its purview to ensure that the information provided by courts and registering agencies is accurate.

Rather than analyze sex offender information, Justice has used its resources to ensure that it complies with the multiple changes to the sex offender registration laws over the last several years. These changes have required Justice to make software changes and improvements to the VCIN, the information system it uses to compile and report sex offender registration information.

In addition to requiring programming changes to the VCIN, changes in the law resulted in more registration forms for Justice and local law enforcement agencies to process because sex offenders were required to register more frequently. According to Justice, between 1997 and 2001, its staff worked overtime to keep up with the volume of paper registration forms submitted by local law enforcement agencies and custodians.

However, in 1999 when the law was amended to require law enforcement agencies to electronically submit sex offender registration information directly into the VCIN, Justice's workload level dropped by 38 percent. The workload decreased again by 55 percent in 2002 as more local law enforcement agencies began using the California Law Enforcement Telecommunication System (CLETS) to enter registration information directly into the VCIN.

JUSTICE HAS RECENTLY TAKEN SOME STEPS TO IMPROVE THE ACCURACY AND COMPLETENESS OF INFORMATION ON REGISTERED SEX OFFENDERS

Justice is Reviewing Sex Offender's Classifications on a Case-by-Case Basis

In January 2003, Justice formed an assessment unit within the Sex Offender Tracking Program to review the classification of sex offenders in the VCIN.

As of July 2003, there were approximately 18,000 records in the VCIN for registered sex offenders classified as other. Records classified as other are not included in the Megan's Law database and thus not disclosed to the public.

Of the 18,000 records, Justice's assessment unit has identified 1,900 records with a 290 offense code and updated the offense code for 497 of these, 351 of which were raised to serious, requiring public disclosure. For most of the remaining 1,403 records, Justice is waiting for responses from agencies in other states.

According to Justice, after the assessment unit completes its review of sex offenders classified as other, it will do a similar review of all sex offenders classified as serious to ensure that offenders who should be classified as high-risk are identified and properly classified.

Justice is Using Various Sources to Obtain Additional Information on the Whereabouts of Sex Offenders

Justice used the services of a private research firm and the assistance of other state agencies to gather information about the whereabouts of 32,633 registered sex offenders. However, Justice determined that the company's findings were not sufficiently authoritative for Justice to use in updating the VCIN records.

Based on information it received, Justice confirmed that 2,833 sex offenders are living outside the State and 1,360 are deceased. However, Justice received either outdated, incomplete, or no information on the remaining 28,440 sex offenders who did not register.

Justice plans to obtain the death information from Health Services annually in the future and is currently purchasing information from the Social Security Administration to use for identifying sex offenders who died in other states.

Justice Has Begun Working With Corrections to Update the Records of Sex Offenders Whose Status of Pending Release From Prison Is Incorrect

Justice has requested Corrections' assistance to determine the current status of 2,575 sex offenders whose records in the VCIN indicated the offenders were pending release from prison.

Corrections determined that as of May 2003:

- 921 were discharged
- 866 were paroled (146 were at large and many others were turned over to the INS and probably deported)
- 207 were either in custody or deceased
- 581 could not be identified

Justice has agreed to work with Corrections to establish procedures to identify those sex offenders who are transferred to the INS. In addition, Justice informed us that it plans to verify the information it received from Corrections and the INS and update its records when appropriate.

RECOMMENDATIONS

To correctly identify and disclose information about all sex offenders, Justice should do the following:

- Continue reviewing records for which it has only the 290 offense code and update the offense codes as appropriate.

- Regularly compare its records showing the incarcerated status with information provided by Corrections to determine which sex offenders are confined and those who are no longer in confinement. Produce exception reports to resolve those records in question and then update the records appropriately.

- Periodically analyze its data to identify and eliminate obvious duplicates.

- Design and implement an appropriate training program for its staff and local law enforcement.

- Include the date each sex offender's information was last provided.

- Finalize its disclaimer information and direct law enforcement agencies to provide the disclaimers to the public members who view the Megan's Law database.

  Disclaimers should include the following:

  - A statement that Justice compiles, but does not independently confirm the accuracy of the information it gathers from several sources.

  - A statement that the information is intended not to indicate the offenders' risk to the public but to help people form their own risk assessments.

  - A statement that the location information is based on the "last reported location," which may have changed.

  - A statement to remind viewers that a fingerprint comparison is necessary to positively identify a sex offender.

To ensure that the records of juvenile sex offenders are properly classified and disclosed to the public, Justice should:

- Coordinate with the Youth Authority and periodically reconcile its sex offender registry with Youth Authority information.

- Provide training to its staff regarding the proper classification of records, such as flagging juvenile records appropriately for public disclosure.

- Revise its pre-registration process with Youth Authority to include a request for court information, which can be used to properly classify juvenile records.

- Request the Judicial Council to amend its juvenile commitment form to require that Youth Authority send a copy of the form to Justice.

To ensure that it updates records of sex offenders who are deceased, or deported, Justice should continue to work with the Department of Health Services, the INS, and other public agencies to obtain this information and update sex offenders' records.

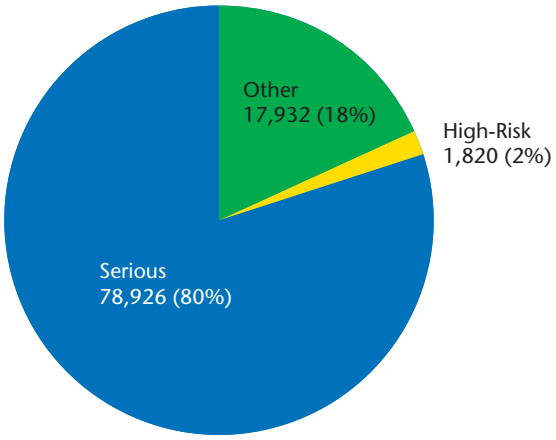
To fully satisfy the intent of the Legislature that it continually reviews the Megan's Law information for accuracy, Justice should design and implement a program to regularly check the data as a whole for inconsistencies and periodically reconcile the data with other reliable information.

APPENDIX A—Figures

The following figures appear in the order of the discussion presented in the presentation.

FIGURE 1

Classifications of Sex Offenders Registered in California as of July 3, 2003



Total registered sex offenders: 98,678

Note: *Other* sex offenders, not subject to public disclosure, are individuals who have committed these offenses:

- Pornography
- Incest
- Indecent exposure
- Misdemeanor sexual battery
- Spousal rape

Juvenile sex offenders adjudicated in juvenile court are also included in the *other* classification and therefore not subject to public disclosure.

Serious sex offenders, subject to public disclosure, are individuals who have committed these offenses:

- Assault with intent to commit specified sex offenses
- Rape
- Sodomy with a minor or by force
- Lewd and lascivious contact with a child or dependent adult
- Oral copulation with a minor or by force
- Continuous sexual abuse of a child
- Foreign object penetration
- Child molestation
- Kidnapping with intent to commit specified sex offenses
- Felony sexual battery
- Felony enticement of a child for purposes of prostitution
- Abduction of a child for purposes of prostitution

High-risk sex offenders are subject to public disclosure because they have been convicted of an offense classified as serious and a combination of other offenses, including at least one violent sex offense and at least two other violent, but non-sex-related, offenses. The following is an example of one such combination of convictions:

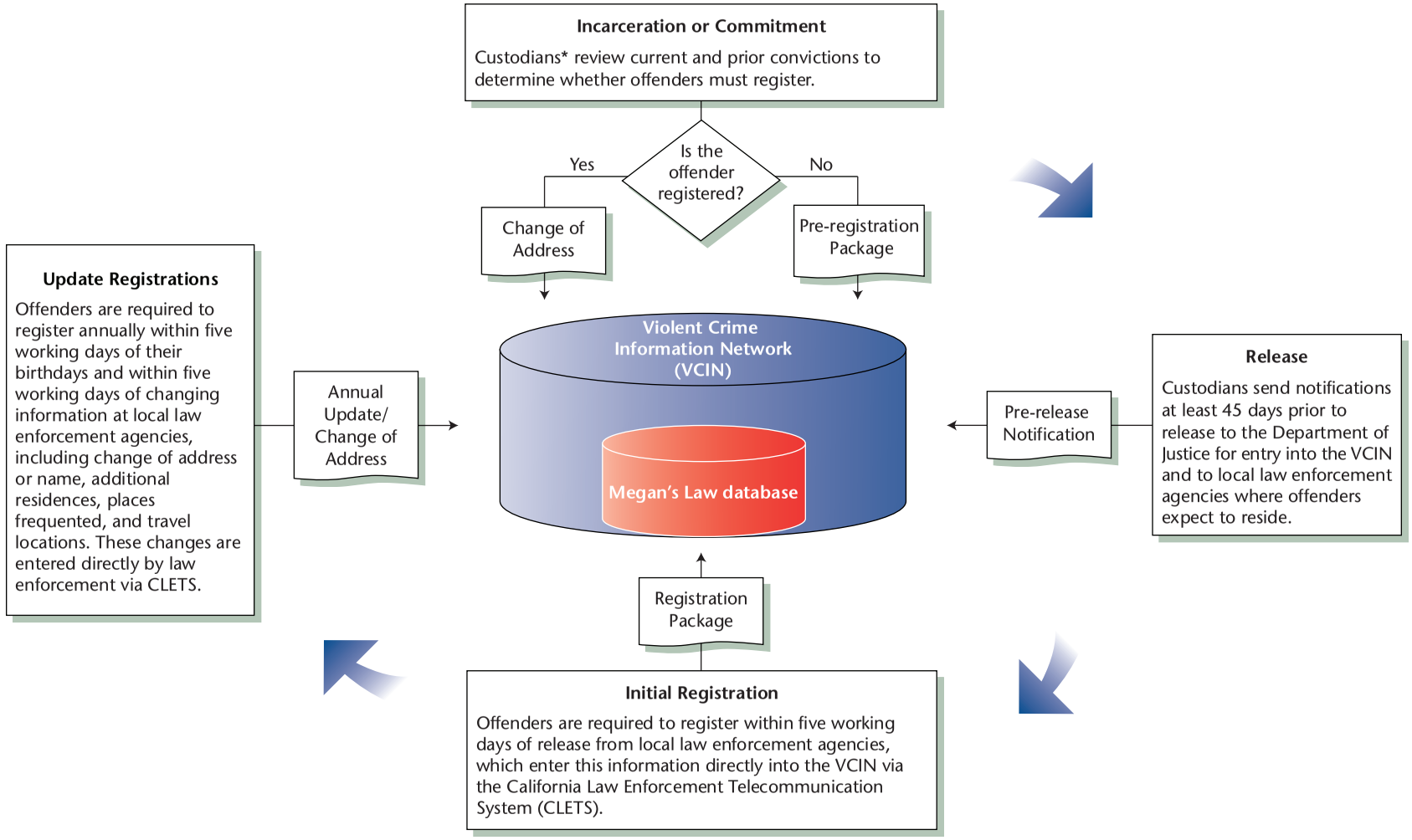
- One "serious" offense
- Two violent sex offenses
- One or more violent non-sex-related offenses
- At least two of the above were brought and tried separately

Violent offenses include, among others, murder; mayhem; torture; kidnapping; and those that are accomplished against the victim's will by means of force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person. Approximately 82 percent of all registered sex offenders comprise *serious* and *high-risk* sex offenders.

Source: Department of Justice Web site and California Penal Code, Section 290(n).

FIGURE 2

Registration Process for Sex Offenders Incarcerated or Committed to State Confinement Facilities


Incarceration or Commitment
Custodians* review current and prior convictions to determine whether offenders must register.
Is the offender registered?
Yes
No
Change of Address
Pre-registration Package
Violent Crime Information Network (VCIN)
Megan's Law database
Update Registrations
Offenders are required to register annually within five working days of their birthdays and within five working days of changing information at local law enforcement agencies, including change of address or name, additional residences, places frequented, and travel locations. These changes are entered directly by law enforcement via CLETS.
Annual Update/ Change of Address
Pre-release Notification
Release
Custodians send notifications at least 45 days prior to release to the Department of Justice for entry into the VCIN and to local law enforcement agencies where offenders expect to reside.
Registration Package
Initial Registration
Offenders are required to register within five working days of release from local law enforcement agencies, which enter this information directly into the VCIN via the California Law Enforcement Telecommunication System (CLETS).

Source: Department of Justice and California Penal Code, Section 290.

* State custodians include officials at state prisons, youth facilities, and hospitals.

APPENDIX B

Survey of Local Law Enforcement

We surveyed 12 local law enforcement agencies (agencies) and received responses from 10 about their use of the Megan's Law database and their use of the CLETS to make entries into the VCIN. Following are the questions we asked each agency and a summary of their answers.

1. Does your department use CLETS to update sex offender information for all address changes and registration information updates into the VCIN?

   YES: 10 NO: 0

2. Does your department update CLETS data in-house, or does your department rely on another agency to update this information?

   In-house: 8 Another agency: 2

3. What term best describes how often your agency checks the VCIN for sex registration violations when a person is arrested, even for a non-sex-related offense?

   All: 5

   Most: 3

   Some: 2

   None: 0

4. When a record check or search in the VCIN reveals an error or out-of-date registration information for a sex offender, do you routinely update and correct the information?

   YES: 8 NO: 2

5. Do you routinely investigate sex offenders to identify and update the records of those who are deceased?

   YES: 6 NO: 4

The agencies' responses allowed us to better understand the varying degrees to which they use the Megan's Law database and enforce Megan's Law violations. All the agencies we spoke to indicated that they use CLETS to update sex offender registration information in the VCIN. Also, eight agencies indicated that they check the VCIN all or most of the time when they arrest a suspect, even for a non-sex-related offense.

We asked the law enforcement agencies about seeking warrants and prosecutions for sex registration violations, and generally they told us that after exhausting other leads to locate an offender who has not registered, they will seek a warrant for the offender's arrest, except in certain circumstances, such as when they believe an offender has moved out of their jurisdictions. Further, some agencies told us that the final decision on whether to seek a warrant and prosecute an offender for a registration violation rests with the local district attorney. In addition, several agencies explained that they do not have adequate staff assigned to register and track offenders. Despite some differences in their processes for tracking and registering of sex offenders, the agencies generally are attempting to register convicted sex offenders residing within their jurisdictions and improve the accuracy of the data in the Megan's Law database.